

*Why is Transparency Not Enough to Address the Institutions Curse?
A Case Study of Nigeria's Implementation of the EITI.*

Why is Transparency Not Enough to Address the Institutions Curse? A Case Study of Nigeria's
Implementation of the EITI.

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COMPULSORY DECLARATION

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This dissertation was my greatest challenge yet but it was fulfilling because, “freedom is always and exclusively freedom for the one who thinks differently”.

Rosa Luxemburg

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1. Introduction:

As a consequence of oil extraction, host communities in resource rich countries are oppressed and impoverished people who suffer from the consequences of environmental degradation and destruction of livelihoods but share no benefit of its extraction. Furthermore, host communities are not regarded as stakeholders that have a say in their development trajectories due to power imbalances embedded in a country's institutional context that are shaped by rent-seeking and patronage. The lack of accountability creates an enabling environment for elites to appropriate natural resources and increases their political control which leads to repression (McFerson, 2010).

This paper adopts the term “institutions curse” to refer to an institutional context that causes underdevelopment in natural resource rich countries (Menaldo, 2016). It argues that referring to underdevelopment in resource rich countries as a “natural resource curse” is inappropriate. This is because natural resources are not directly linked to poor development outcomes.

The institutions curse refers to public sector institutions and it argues that the term explains why natural resources are a curse for some countries and a blessing for others (Kolstad & Wiig, 2009a). The important point is that policy and institutional changes are less likely to occur in a vacuum (Rosser, 2006). In addition, the institutions curse highlights the power imbalances that favour political elites, patrimonial governments and the private sector. Furthermore, it highlights the unequal information asymmetries that exist between the elite and the public and that lead to corruption.

Transparency, through global transparency and accountability tools such as the Extractive Industry Transparency Initiative (EITI), has been brought forward by the international community as potentially able to mitigate underdevelopment in resource rich countries. These

international actors include the Western Donor community that includes North American and European governments, Western dominated multi-lateral institutions such as the WB, IMF and the G-8 and other global Non-Governmental Organizations (NGOs).

The paper applies Kolstad & Wiig's (2009a) understanding of impartiality enhancing institutions in Nigeria to argue that transparency is not enough for two major reasons. Weak institutions and governance, as in the case of Nigeria, are not easily altered by transparency alone. One needs to change the incentives of the governing elite by *punishing* those who benefit from the lack of transparency and by supporting agents that advance the interests of communities through *civil society*. In its current format, the Nigeria Extractive Industry Transparency Initiative (NEITI) does not have the ability to sanction the behaviour of companies or government officials for corruption, human rights violations and environmental degradation. Furthermore, through its National Stakeholder Working Group (NSGW), the multi-institutional arrangement of the EITI, the NEITI is currently unable to achieve meaningful civil society participation that is likely to lead to achieve accountability. This means that the NEITI cannot alter the power dynamics in Nigeria's oil sector and this is reinforced by its institutional context.

This paper has six chapters. The first chapter will begin with an introduction on the natural resource curse literature and how it has evolved over time and shifted its focus on natural resources to a country's institutional context and how this affects underdevelopment. The second chapter of the paper will discuss how and why transparency became globally recognized as potentially able to mitigate the "natural resource curse". The third chapter will evaluate the history and the impact of the EITI. The fourth chapter will critically analyze the implementation of the EITI in Nigeria. Finally the paper will conclude.

2. Chapter 1: The Natural Resource Curse or Institutions Curse?

2.1. An Introduction to the Natural Resource Curse:

In the early 1960s, development economics was populated by the idea that poor countries must experience large windfall revenues to break out of poverty. Prominent development scholars such as Walter Rostow argued that natural resource abundance would better facilitate the transition from underdevelopment to a process of industrialization (Rosser, 2006). Yet, many resource rich countries experienced poor economic performance as compared to resource-poor countries (Stevens, 2003).

The potential negative impacts of resource wealth first emerged among development economists in the 1950s and 1960s (Stevens, 2003). This early scholarship of the natural resource curse was preoccupied by the need to explain the “paradox of the plenty”, a phenomena which saw countries with abundant resource wealth with poor economic performance, civil war, high levels of poverty and authoritarian rule (Sachs & Warner, 1997; 2001; Ross, 1999; Auty, 2000; Rosser, 2006).

The natural resource curse is defined as the adverse effects of a country's natural resource wealth on its economic, social or political well-being (Ross, 2015). In 1993, Richard Auty was the first to speak of a “natural resource curse” and since then there are many scholars who have attempted to explain this phenomena by using a variety of explanations.

There is consensus that countries with abundant natural resource wealth are outperformed by poorly resourced countries. However, there is little agreement on why this is the case (Ross, 1999). This is especially true for the mining sector (Davis & Tilton, 2005). Scholars question the

positive relationship between mineral extraction and economic development that was held by neo-classical economists.

3. *Economic Explanations of the Resource Curse:*

Auty (1994) was one of the first scholars that were intrigued by the relationship between natural resources and economic growth. This early attempt focused more on industrial and macro-economic policy as a key variable that can mitigate the resource curse. However, later studies about economic growth reveal that natural resources *per se* do not have a significant impact on economic growth (Stijins, 2000).

In an early attempt to understand the relationship between natural resources and economic growth, Sachs and Warner (1999) use the Dutch Disease to explain the natural resource curse. In this explanation, the shrinking of the manufacturing sector is the disease (Sachs & Warner, 1999). Sachs and Warner (1999) find an inverse association between natural resource abundance and economic growth suggesting that there are other mitigating variables that affect economic growth (Sachs & Warner, 2001). Furthermore, in their later paper, Sachs and Warner (2001) argue that establishing a causal relationship between natural resources and economic growth is as difficult as determining what ultimately drives growth.

Some of the features of the Dutch Disease include a large real appreciation in the currency, an increase in spending by government because of the resource windfall, a labour shift away from the manufacturing sector, a current account deficit and an increase in non-traded goods relative to traded goods (Frankel, 2010). Ultimately, the increase in the prices of non-traded goods leads to de-industrialization (Frankel, 2010, Ross, 1999). In addition, the Dutch disease causes economic decline because of ailing terms of trade for primary commodities, the instability of

international commodity markets and poor economic linkages between the resource and non-resource sectors (Auty, 1994; Ross, 1999). These early explanations mainly focused on economic explanations to understand the natural resource curse.

Other economic explanations focus on the role of investment and saving to avert the natural resource curse (Gyfalsón & Zoega, 2001; Paprakis & Gerlagh, 2004). Gyfalsón & Zoega (2001) argue that natural resource abundance may indirectly negatively affect saving and investment by allowing the financial sector to degenerate (Van der Ploeg & Poelhekke, 2009; Van der Ploeg and Venables, 2012). They suggest that economic and structural reforms can overcome this adverse effect. Moreover, Gyfalsón and Zoega (2001) argue that well developed financial institutions will encourage savings and investment which will contribute to economic growth. They also argue that economic and structural reforms are necessary to achieve efficient capital markets, increased investments and a better allocation of capital across all sectors (Gyfalsón & Zoega, 2001).

To avoid the natural resource curse, Van der Ploeg and Venables (2012) see an intergenerational sovereign wealth fund as one possible solution to protect a resource-rich economy. There are many scholars that agree with this assertion including Van der Ploeg (2006). Since natural resources are exhaustible and should be shared by future generations as well, Van der Ploeg (2006) contends that it only makes sense to create a fund that will allow future generations to benefit from it as well. Furthermore, according to Van der Ploeg (2006) another alternative to avoid the curse is to use natural resources revenues to reduce government debt and invest in education and infrastructure projects. However, Van der Ploeg and Venables (2012) argue that the success of managing such a fund will depend on a country's economic, political and social institutions (Van der Ploeg & Venables, 2012).

3.1.The Criticism of Economic Explanations:

Ross (1999) questions existing economic explanations such as the Dutch Disease, which he finds are less applicable for developing countries. In refuting the Dutch Disease, he explains that its validity is subject to the assumption that a resource rich country's natural resource sector is capable of drawing labour and capital away from the manufacturing and agricultural sectors leading to a lack of productivity and export in these sectors. In addition, that this will lead the inflation of goods and services that can be imported (Ross, 1999). Ross (1999) questions the Dutch Disease because it assumes that an economy's capital and labour are fixed and fully employed before a resource boom. This reality is a very rare in developing countries.

Furthermore, the Dutch disease assumes that the natural resource curse can be easily averted if domestic and foreign goods are perfect substitutes for import goods which become cheaper when the exchange rate appreciates (Ross, 1999). This suggests that policy tools can easily mitigate the Dutch Disease but it does not explain why governments do not adopt these relevant policies in the first place (Ross, 1999). Ross (1999) further argues that this is the most interesting question about the natural resource curse, why states fail to take measures that avert the paradox of the plenty. For Ross (1999), the answer can be found in the political explanations of the resource curse.

Stevens (2003) also critiques the Dutch Disease and argues that the Dutch Disease focuses its attention on the effects of manufacturing only and this is proof that much of the work on it has been concentrated more in developed countries like Norway. Alternatively, Stevens (2003) argues that a major part of the natural resource curse should be seen as essentially political and

relating to the role of government. This strand of literature shifts the focus away from economic explanations which dominated the early scholarship.

3.2. Political Explanations of the Resource Curse:

According to Ross (1999), when compared to economic explanations of the resource curse, political explanations are better able to address why states fail to adopt and maintain transparently suboptimal economic policies which are more likely to lead to development. Ross (1999) provides three reasons for possible stunted economic growth in natural resource-rich countries. These reasons can be grouped into three categories: cognitive explanations, societal explanations and state centered explanations. Ross (1999) contends that cognitive explanations focus on the short-sightedness among policy-makers to make the best policies that will yield development outcomes; societal explanations contend that resource rents only empower certain sectors, classes or interest groups that support growth-impeding policies; and state-centered explanations focus on the causal relationships between natural resources and state institutions

Ross (1999) contends that state-centered explanations provide a better explanation for why a resource boom produces a decline in the quality of state policies. These explanations are referred to as the “rentier state theories” and are the most common version of state-centered approaches (Ross, 1999; Sarraf & Jiwanji, 2001). Ross (2015) argues that rentier state theories focus on the need to tax citizens to achieve accountability by state officials to the societies they govern.

However, according to the rentier state theory, the need to tax citizens declines the more the state begins to rely solely on resource revenues. Barma, Kaiser, Minh Le and Vinuela (2011) contend that in short, rents become a political currency as governments become preoccupied in guarding the status quo instead of promoting welfare enhancing development. In addition, the rentier state

receives very little pressure to improve economic policies because it does not tax citizens. Instead it is preoccupied by the constant demand to discourage political opposition (Ross, 1999). As a consequence, resource rents also induce patronage behaviour in a constant bid to take over the state.

Theories of the rentier state come in different forms and emphasize different causal links between resource rents and poor economic growth. However, despite there being many causal links, Ross (1999) emphasizes the work of D. Micheal Shafer (1994) and Terry Lynn Karl (1997) which argues that resource abundance tends to weaken state institutions as a result of other intervening factors. In this paper, Ross (1999) emphasizes the work of other scholars who argue that the leading sector of an economy affects institutions uniquely. This work argues that the dependence on petroleum revenues produces a distinctive type of institutional setting which becomes weakened and affects the extractive capability of the state (Ross, 1999). However, Ross (1999) critiques these early attempts by scholars for their lack of conceptual clarity which make their findings difficult to test. This work is one of the earliest attempts to identify institutional quality as a possible factor in the resource curse literature.

In these early studies the relationship between natural resource abundance and institutional quality received limited attention (Brunnschweiler, 2008). However, the review of the literature suggests that it should have played a more prominent role. For example, studies done by scholars such as Acemoglu, Johnson and Robinson (2001) show that institutional quality alone can explain a great deal of cross-country differences in economic development. The literature is also dominated by debates about the definitions of institutions; which institutions matter; and different measures of institutions. The next section explores these debates.

4. *Democracy and the Natural Resource Curse:*

The natural resource literature is also dominated by scholars who see democracy and democratic institutions as one possible way to avoid the natural resource curse. The main argument is that rising incomes linked to oil wealth causes a decline in democracy (Ross, 2001). Scholars also argue that this is particularly the case when oil is extracted onshore as in the Niger Delta in Nigeria or offshore as in Angola.

In one of the most influential papers, Ross (2001) argues that oil wealth tends to make states less democratic. Ross (2001) also finds that this claim is statistically valid and robust and provides three explanations for why oil hinders democracy: the rentier effect, the repression effect and the modernization effect. First, the rentier effect argues that governments use low tax rates to relieve pressure from citizens for greater accountability. This argument falls under rentier state theories. Second, the repression effect argues that oil revenues are able to provide governments with more funding for security and oppression. Finally, the modernization effect holds the view that oil-dependence is unable to produce cultural and social changes that lead to a democratic government. Ross (2001) argues that these effects interact and complement each other and eventually lead to authoritarianism.

Van der Ploeg (2011) highlights the importance of regime types as a possible transmission channel of the natural resource curse and adds a different layer to the debate by arguing that presidential democracies are more likely to experience the resource curse as compared to parliamentary democracies. One can conclude that the constitutional system can also explain why the natural resource curse occurs in some resource rich countries (Van der Ploeg, 2011). Presidential systems are less accountable and less representative. However, Van der Ploeg (2011)

argues that the nature of the constitutional system is more important than democratic rule for the relationship between resource dependence and growth.

Furthermore, Van der Ploeg (2000) also argues that corruption is more prevalent in non-democratic regimes. This argument indicates that the degree of power distribution may be an important contributor to the natural resource curse (Van der Ploeg, 2000; Shaxson, 2007). In addition, Van der Ploeg (2000) contends that checks and balances are necessary for averting the resource curse.

Moreover, Van der Ploeg (2000) distinguishes between institutional appropriability and technical appropriability. Institutional appropriability implies that resource dependence only has negative impact on economic development when institutions are weak. On the other hand, technical appropriability implies that the impact of institutional quality and resource dependence is more exaggerated the more technically appropriable the country's resources are. Oil is identified as a technical appropriable resource due its extraction process (Boschini, Petterson & Roine, 2007). The concept of "appropriability" captures the likelihood that natural resources will lead to rent-seeking, corruption or conflict thus affecting economic development (Boschini et al., 2007). Ultimately, Van der Ploeg (2000) contends that the resource curse depends on institutional quality and the type of resource endowment a country has.

Jensen and Wantchekon (2004) take the argument further by testing the relationship between political regimes and natural resource wealth in Africa. They find that natural resources have mostly led to economic decline in African petrostates thus reinforcing the argument about the importance of the type of resource endowment. The literature is also populated by theories that argue that when incomes rise, governments tend to become more democratic. However, these

studies also contend that the exception to the rule applies to countries that are rich in oil (Ross, 2001). This is evidenced by the fact that the living conditions of petro-states are below the average of sub-Saharan African countries that have similar income levels.

In addition, Jensen and Wantchekon (2004) find that African resource-rich countries struggled to achieve democratic consolidation after the third wave of democratization. These states are Nigeria, Libya, Gabon, Cameroon and the Republic of Congo (Jensen & Wantchekon, 2004). South Africa and Botswana are the exception and this is evidence that not all resource rich countries become undemocratic. They further argue that to avoid the natural resource curse, these countries must introduce strong mechanisms of vertical and horizontal accountability within the state (Jensen & Wantchekon, 2004; Shaxson, 2007). More specifically, they highlight that it is the degree of executive discretion over the distribution of oil rents or mineral revenues that causes democratic decline or breeds authoritarian governments (Jensen & Wantchekon, 2004; Shaxson, 2007).

Similar to early arguments made by Ross (2001), Jensen and Wantchekon (2004) emphasize that revenues derived from natural resources cause states to become more detached and less accountable. However, their argument is more nuanced as they claim that it is the executive discretion over resource rents that lead to less political liberalization. Another important nuance in Jensen and Wantchekon's (2004) argument is the importance of transparency in curbing executive discretion to redistribute rents productively. Jensen and Wantchekon (2004) argue that informational advantage by political incumbents leads to a lack of accountability.

Damania and Bulte (n.d.) also argue that natural resources can have a negative impact on public policy and argue that it is conditional on the political regime type. They also argue that

although autocratic regimes are more likely to become rent-seeking, democratic regimes yield ambiguous outcomes (Damania & Bulte, n.d.). In democratic regimes, the impact of natural resources can lead to a greater struggle during democratic transition and democratic consolidation (Jensen & Wantchekon, 2004). For example, this can translate into one-party dominance such as the one observed in Botswana.

4.1. The Criticism of Democracy Explanations:

There are also scholars who critique democracy explanations. For example, Stevens (2003) argues that the recommendation to become democratic is misleading because democracy is not a condition for economic growth. Furthermore, scholars such as Oskarsson and Ottosen (2010) critique Ross (2001) for a lack of conceptual clarity on the notion of democracy and state that it leads to inconclusive outcomes.

In addition, Oskarsson and Ottosen (2010) argue that early scholarship about oil and democracy does not adequately acknowledge the multifaceted nature of democracy as a dependent variable. Moreover, they argue that the conclusions about the relationship between oil and democracy do not stand the test of time.

Moreover, Oskarsson and Ottosen (2010) also argue that democracy is a highly contested concept among political scientists and that it is more important to distinguish between procedural democracy and substantive democracy. Procedural democracy emphasizes political rights in the form of rules and institutions such as the requirement for free and fair elections. In contrast, substantive democracy emphasizes the need for political liberties to ensure that national government is accountable to the general citizenry and that each citizen is entitled to participate

in government decisions either directly or through an elected representative, is given the right to express political opinions and the space for free media.

Oskarsson and Ottosen (2010) contend that most studies about the relationship of resource endowment and democracy tend to use a measure of regime type that focuses solely on procedural political rights. In addition, Oskarsson and Ottosen (2010) conclude that more research is needed to determine the relationship between democracy and oil by using both indicators of democracy to further test the robustness of prior studies.

4.2. Corruption and the Natural Resource Curse:

Other scholars see levels of corruption as an important measure of institutional quality *inter alia* the rule of law and state competence (Damania & Bulte (n.d.); Ross, 2001; Jensen & Wantchekon, 2004; Brunnschweiler, 2008). For example, Damania and Bulte (n.d.) use a political economy model that focuses on the effects of resource abundance on government-decision making, corruption and political incentives. The paper by Damania and Bulte (n.d.) is unique in the sense that their conclusions are based on testing a variety of democracy measures. They find that the statistical relevance of democracy and its relationship to growth in natural resource-rich countries depends on the measure used. Furthermore, they find that the main effect of resource abundance on growth occurs through an interaction with political variables (Stevens, 2003; Rosser, 2006). Moreover, Damania and Bulte (n.d.) argue that although petroleum is likely to lead to a curse, this happens indirectly through corruption.

Shaxson (2007) argues that the over reliance of petrostates on vertical and hierarchal political relationships only poses a challenge for political accountability and leads to an increase in corruption. Shaxson (2007) defines corruption as the abuse of wider interests by narrow interests

and sees democracy as a possible solution. However, Shaxson (2007) argues that the most important remedy to combat corruption is the strengthening of both horizontal and vertical political relationships to achieve equitable distribution of resource rents in societies.

The natural resource literature also emphasizes the importance of accountability to combat the natural resource curse. As part of the debate about how to achieve accountability, Van der Ploeg (2006) recommends that it may be useful to distribute revenues automatically or instantaneously directly to citizens. Furthermore, Van der Ploeg (2006) argues that this will allow all citizens to get an equal share of natural resource rents and only afterwards can the government tax citizens to fund social and economic infrastructure because it is easier to manage resources that come from taxes than those that, “fall from heaven like manna” (Van der Ploeg, 2006:31). However, van der Ploeg (2001) does not consider what this means in contexts where communities do not want mining at all as in the case of Xolobeni in South Africa (Luthango, 2018). Furthermore, where environmental degradation and human rights violations occur, sharing the benefits of mining economic returns might not mean anything for communities. Nevertheless, Van der Ploeg's (2006) main point is that whether tax collection is done through various other means such as through royalties or directly from citizens, it is more important that it is done in an accountable and transparent manner.

5. Natural Resources and Civil War:

Mineral wealth is also linked to higher risks of civil war and greater inequality (Ross, 2001; Shaxson, 2007). The scholarship on the relationship between natural resource abundance and civil war distinguishes between the onset of civil war and the duration of civil war (Ross, 2004; Humphreys, 2005; Ross, 2006). There is some literature that also focuses on civil conflict

intensity and resource dependence but only a few scholars have discussed this relationship further (Ross, 2004). Furthermore, in another study, Collier and Hoeffler (2002) find that natural resource dependence is more likely to lead to separatist civil war. Ross (2004) also reinforces this assertion and argues that resources play a different role in separatist conflicts than they do in non-separatist conflicts. The civil war literature is divided into economic explanations and political explanations. Economic explanations of civil war link low-economic growth and low-income levels with natural resources. In contrast, political explanations argue that civil war is an outcome of weak institutions in resource rich countries (Collier & Hoeffler, 2005; Humphreys, 2005).

The civil war literature mostly argues that in resource abundant countries, rebel leaders out-compete ideological leaders and this is called the grievance approach (Collier & Hoeffler, 2005). By using micro-level evidence on rebel organisation, Collier and Hoeffler (2005) argue that rent-seeking governments in resource rich countries produce grievance rebellion which is later crowded out by opportunistic rebellion and that this is mostly caused by their proneness to shocks (Collier & Hoeffler, 2005).

Additionally, Collier and Hoeffler (2005) also agree with Ross (2001) and contend that the risk in primary commodities is confined to oil due to the amount of rents it produces. One can then conclude that *resource rents* as distinct from *natural resources* have an important effect on conflict. Collier and Hoeffler (2005) further argue that the established causal mechanism is via governance onto long term growth rate and this implies that the relationship between natural resources and civil war is an indirect one. However, Collier and Hoeffler (2005) argue that resource rents will not inevitably lead to civil conflict or low-income growth but it depends mostly on whether the resource rents are used to finance patronage which reduces the need for

taxation to effectively undermine checks and balances. One can conclude that the need for checks and balances is a recurring theme in the natural resource literature.

The debate about democracy is also relevant in the civil-war literature. In an autocratic regime, Collier and Hoeffler (2005) contend that the office time horizon will likely cause irrational looting that is based upon a narrow ethnic minority that is in power. In contrast, in a democratic society, the nature of democracy will determine the balance between electoral elements of democracy and due processes in the form of checks and balances.

Scholars such as Humphreys (2005) also use the grievance approach and argue that to limit grievances induced by extraction one must regulate corporate practices. For example, through corporate participation in voluntary mechanisms. Moreover, governments can also reduce grievances that are associated with natural resources by providing the public with better access to information about how and where revenue is earned and spent. Humphreys (2005) also contends that oversight from civil society over expenditures may also be necessary. From a policy point of view, Humphreys (2005) suggests that the EITI is an example of an initiative that can possibly mitigate mining related grievances.

In light of this argument, Le Billion (2001) also confirm that natural resources do not necessarily lead to civil conflict but they increase the vulnerability of countries to it by weakening the ability of political constitutions to peacefully resolve conflicts. Furthermore, that resource dependence can be a historical outcome associated with the global economy, through colonization, private trans-border commercial interests and domestic elites.

Le Billion (2001) also acknowledges the negative impact that resource rents can have on accountability, thus reinforcing the grievance rebellion hypothesis by Collier and Hoeffler (2005).

Similar to Collier and Hoeffler (2005) he contends that resource-rich countries tend to have predatory governments serving sectional interests therefore face a higher risk of violent conflict (Le Billion, 2001). Moreover countries with horizontal inequalities along ethnicity, race, class or religion face a higher risk of conflict. This risk is exacerbated by biased institutional structures which are defined by corruption, clientelism and patrimonialism and the political distribution of resources.

Le Billion (2001) also adds an important element to the debate about civil conflict- the importance of geographical location of natural resources. Depending on geographical concentration, resources are divided into diffuse and point resources (Le Billion, 2001; Ross, 2004). The latter is concentrated in one particular region and mostly includes resources exploited through mining. In contrast, diffuse resources are more widely spread and include productive industries like agriculture and fishing. Most of the resource literature agrees that point resources pose a greater threat for negative development outcomes including civil war.

Moreover, according to Boschini et al. (2012) point resources are characterized by being more centrally controlled. Hence, the fight to control, transform and distribute benefits and externalities of point resources increases the risk of violent outcomes (Le Billion, 2005).

5.1. Criticism of Natural Resources and Civil War:

Several scholars have critiqued Hoeffler and Collier (2005). Fearon and Laitin (2003) argue that Hoeffler and Collier's (2005) findings appear fragile and that there is no significant relationship between civil war and natural resource dependence. Moreover, that there is no significant relationship between natural resource dependence and the duration of civil war (Ross, 2004). According to Ross (2004) these critiques are based on the fact that the civil war variable appears

robust only when one uses Collier and Hoeffler's (2005) list of civil wars. Other scholars have attempted to replicate the study using different versions of their database and found no significant correlation between primary commodities and violent conflict.

In his later study, Ross (2006) finds that exogenous measures of oil, gas and diamonds leads to the onset of civil war. Ross (2006) further argues that there are three different mechanisms by which oil and diamonds lead to civil war. However that the only robust variable linked to conflict duration is contraband. In contrast, Humphreys (2005) argues that conflicts in resource-rich countries end quicker because they are more likely to end with a military victory of one side rather than a negotiated settlement.

Furthermore, in a later study, Ross (2006) revokes the strong link between oil and civil war and argues that the use of "resource exports to GDP" as a variable for resource wealth is flawed because civil wars may be the cause of resource dependence or both civil war and resource dependence may be caused by a third variable (Ross, 2006). This creates a problem for robustness and a failure to determine casual mechanisms between oil and civil war.

Ross (2006) concludes that minerals lead to civil war because the incentive for independence for resource-rich regions increases; trade shocks that may trigger both national and separatist conflicts; and that there is at least one mechanism that links oil and diamond civil war. Ross (2006) further emphasizes that the causal mechanism between oil and civil war is so rare, that it should make one very modest in claiming a resource-conflict link. Moreover, Ross (2006) argues that rather, the link between natural resources and civil conflict applies more for lootable resources such as diamonds, gemstones and contraband (Ross, 2004; Ross, 2006). One can conclude that the likelihood of oil directly causing civil-war is unlikely.

Another critique of the natural resource dependence and civil conflict relationship is leveled by Brunnschweiler and Bulte (2009) who argue that conflict increases dependence on natural resources. Moreover, that natural resource abundance reduces the onset of civil wars and that there is no need to link resource dependence to civil wars or low-economic growth. Brunnschweiler and Bulte (2009) conclude that natural resources reduce the risk of conflict via an income effect.

Scholars such as Hodler (2005) also argue that the income effect is especially important in factionalized societies because when incomes are lower the risk of civil conflict is higher than it is in homogenous societies.

5.2. Is it an Institutions Curse?

Mehlum, Moene and Torvik (2006a) contend that differences in institutional contexts can explain the divergent impact of natural resources where economic and political explanations cannot. This argument refutes earlier claims made by scholars such as Sachs and Warner (1995) who argue that institutional arrangements do not affect economic growth and do not play a decisive role in the resource curse.

The “institutions” literature is divided into three strands that use different measures of institutions and political indicators to explain this relationship. The first strand argues that the quality of institutions is negatively affected by an abundance of natural resources (Mehlum et al., 2006a). This relationship denotes an intermediate causal link between natural resources and economic growth. It argues that natural resources lead to institutional decay that allows efficient or effective plunder of the state for private purposes by leaders (Mehlum et al., 2006a). In the second strand, institutions do not play an important role (Mehlum et al., 2006a). This strand of

literature sees institutions as neutral, instead the resource curse is an intermediate causal link. For example, the Dutch Disease is seen to lead to low economic growth but not to natural resources directly. Finally, the third strand argues that the natural resource curse occurs when institutions are “good” and another where institutions are “bad”. In this strand, natural resources *test* institutions (Mehlum et al., 2006a). Natural resources do not necessarily cause institutional decay but depend on whether or not natural resource rents are allocated productively or not.

Furthermore, whether the rents are allocated productively or not depends on the quality of institutions (Mehlum et al., 2006a). Mehlum et al. (2006a) apply the rent-seeking theory and argue that when institutions are bad, dysfunctional democracies invite political rent appropriation; low transparency invites bureaucratic corruption; weak protection of property rights; weak protection of citizen rights, weak rule of law and warlordism. The term “grabber friendly” institutions is used to describe the latter institutional setting ((Mehlum et al., 2006a).

Scholars support the argument made by Mehlum et al. (2006a) about the role of institutions in the natural resource political economy. Robinson, Torvik and Verdier (2006) argue that countries that have institutions that promote accountability and state competence are more likely to benefit the most from a resource boom.

Moreover, Robinson et al. (2006) argue that political institutions are the most relevant institutions to promote accountability. This means that whilst some scholars see financial institutions as equally important to address the natural curse, political institutions are more relevant for promoting accountability from public officials (Gyfalsón & Zoega, 2001; Van der Ploeg & Venables; 2012). Robinson et al. (2006) criticize previous studies for focusing purely on

economic impacts of natural resources which focus on financial institutions. In addition, they criticize apolitical explanations about rent-seeking.

Furthermore, Robinson et al. (2006) argue that countries that develop political institutions and state competence are more likely to benefit from resource booms and that this explains why for every Venezuela and Nigeria there is a Norway and Botswana. In addition, that any robust political model should be able to address why some resources induce prosperity in some countries but not others (Robinson et al., 2006). Mehlum, Moene and Torvik (2006b) introduce the terms “growth losers” and “growth winners” to distinguish between countries’ institutional arrangements.

In light of this argument, Brunnschweiler and Bulte (2007) rebut the early dominant consensus about resource dependence leading to a natural resource curse. Instead, they also argue that natural resource dependence is an outcome of the institutional setting and that the natural resource curse may be a red herring because a bulk of the empirics use a measure of resource dependence to denote resource abundance (Brunnschweiler & Bulte, 2009).

Furthermore, Brunnschweiler and Bulte (2007) argue that resource abundance is actually correlated with strong institutions and rapid growth. They conclude that studies should distinguish between resource abundance which is the stock measure of in situ of resource wealth; resource rents, which is the revenue derived from resource stock; and resource dependence, which is the degree to which countries have diverse sources of income or not. For example, resources in the ground have been found by some scholars to not pose the same threat for institutional quality or economic performance as flows of resource rents do (Brunnschweiler & Bulte, 2007).

Brunnschweiler and Bulte (2007) contend that the causality is from institutions to dependence; countries with poor institutions are unlikely to diversify their economies. Using this logic, Brunnschweiler and Bulte (2007) conclude that one cannot imply that there is a “curse of resources” but possibly what Victor Menaldo (2016) refers to as the “*the institutions curse*”.

Menaldo (2016) uses an economic framework to describe the institutions curse. It focuses more on the management of macroeconomic institutions and fiscal policy to achieve economic and political development (Lawera, Lukas & Jørgensen, 2017). Additionally, Menaldo (2016) highlights credibility problems in fulfilling contractual obligations and high transaction costs for political incumbents as important facets of the institutions curse. Property rights and state capacity are highlighted as key institutions that enable economic development.

Whilst Menaldo's (2006) explanation of the institutions curse is mostly economic, this paper argues that it can also be applied to refer to public institutions too. For example, while the Dutch Disease adopts a more economic explanation of institutions, it can be contrasted with what Williams (2011:490) refers to as the “Nigerian Disease”. The Nigerian Disease argues that the natural resource curse is caused by governments who fail to effectively manage natural resource revenue (Williams, 2011). Over the years, corruption in the form of rent-seeking and patronage have become predominant explanations of the natural resource curse (Williams, 2009). In the same vein, this paper also speaks of an institutions curse.

Kolstad and Wiig (2009a) reinforce the argument made by scholars such as Brunnschweiler and Bulte (2007). Kolstad and Wiig (2009a) argue that political economy models which focus on how certain resource rents lead to dysfunctional patronage or rent-seeking behavior are central to understanding the causes of the resource curse. They contribute to this literature by introducing

the concept of “impartiality enhancing institutions” as the key to neutralizing the adverse effects of resource rents.

Impartiality enhancing institutions are defined as institutions that reduce the possibility or attraction of favouritism. Furthermore, institutions that act in the interest of the public rather than those that increase the power of political elites (Kolstad & Wiig, 2009a). Kolstad and Wiig (2009a) see institutions as an equilibrium outcome of repeated interactions of agents. They argue that minor reforms to institutions will not be a sustainable solution to bad institutional equilibrium because local elites will have incentives to revert back to the status quo.

Kolstad and Wiig (2009a) further distinguish between two types of impartiality enhancing institutions. One type are functioning institutions of democratic accountability and rule of law which limit the extent to which government can obtain its power through patronage and rent-seeking. The other type are institutions of private sector efficiency. By applying North's (1990) definition of institutions, the rules of the game, Kolstad and Wiig (2009a) argue that impartiality enhancing institutions refer to the rules that advance impartiality.

Furthermore, Kolstad and Wiig (2009a) argue that impartiality enhancing institutions are especially important in resource rich countries where policies and laws are often skewed towards the interests of governing elites. Moreover, that impartiality can provide a focal point for policy makers interested to improve the interventions which further encourage power and representation to become more uneven in resource rich countries. One can conclude that the fair representation of power is central for the impartiality enhancing institutions theory.

For example, Kolstad and Wiig (2009a) argue that capacity building initiatives that are supported by international organizations and aimed at strengthening the bureaucracy are likely to become

particularistic because they are created and directed by patrimonial governments. Furthermore, Kolstad and Wiig (2009a) argue that attempts to impose Western institutions to other societies have mostly failed because their maintenance may not be in the interest of elites. Consequently, local elites either resist reform passively or actively.

Moreover, Kolstad and Wiig (2009a) argue that a more sustainable solution is to encourage local elites to develop minimum standards for democratic accountability by encouraging the evolution of institutions and ultimately changing the underlying incentives of institutions. However, since institutions are difficult to alter, incremental change will not have any significant impact in how they function.

Kolstad and Wiig (2009a) therefore argue that institutional change, to alter power imbalances in a bad institutional context, is more likely to be achieved if the incentives of those who benefit from the lack of transparency are punished (Kolstad & Wiig, 2009a). They suggest that technical solutions to weak governance and institutions will not be enough and that sanctions must be imposed on those who benefit from opaque transparency and the lack of accountability with an end goal of improving institutions (Kolstad & Wiig, 2009a).

Kolstad and Wiig (2009a) further argue that what is needed are interventions that raise the voice and influence of those who are not included in decision making processes about how resource revenues should be spent. And, to achieve impartiality enhancing institutions, there is a need to support agents such as independent NGOs and other organizations that can advance the plight of impoverished and disenfranchised citizens through selective interventions that can increase the influence of agents to counter-balance the power of patrimonial governments (Kolstad & Wiig, 2009a).

Kolstad and Wiig (2009a) also argue that the concept of impartiality enhancing institutions recasts the natural resource curse as a political and social problem instead of seeing it as a purely technical one. Kolstad and Wiig (2009a) conclude that Sachs and Warner (1995) should not have titled their work, “*Natural Resource Abundance and Economic growth*”. Similar to Brunnschweiler and Bulte (2007), they argue that it is not empirically appropriate to speak of the curse of natural resource curse *per se* because it is more about management of resource rents.

In support of Kolstad and Wiig (2009a), Naazneen (2010) argues that it is important to tailor interventions according to a country's specific context, institutional arrangements and local variation. Against this background, Nazneen (2010) argues that there is a need to identify factors that increase inclusiveness by incorporating more political, social and economic groups into decision making that will lead to a more accountable state that will orient rent allocation toward collective welfare (Naazneen, 2010). The paper therefore agrees with Kolstad and Wiig (2009a) and will test the robustness of their theory about the need for impartiality enhancing institutions in countries that have an institutions curse.

Criticism of the Institutions Curse:

The institutions literature is also dominated by debates about appropriate measures of institutions. Scholars use different measures of institutional quality and hence they have been criticized for not being clear about what “institutional quality” entails (Stevens & Dietsche, 2008). For example, Boschini et al. (2012) use the Polity IV measure of democracy which reflects the presence of institutions and procedures that can allow citizens to express preference about alternative policies and leaders; the presence of institutional limits to the powers of the executive;

and the guarantee of civil liberties. Other institutional measures include that of Acemoglu (2005) who uses property rights to mean the rules and regulations that govern contracts between citizens.

Furthermore, the institutions literature has also been criticized for not being clear about which institutions should be improved (Stevens & Dietsche, 2008). Some scholars argue that democratic institutions are more important to reverse the natural resource curse (Bulte, Damania & Deacon, 2005). They argue that the effect of resource rents on corruption depends on the quality of democratic institutions and the level of democracy (Bhattacharyya & Hodler, 2010; Boschini et al., 2012). The evidence from the resource curse literature suggests that institutional reform will be a necessary condition for countries to avert underdevelopment.

This paper addresses these critiques and argues that impartiality enhancing institutions matter most to address the institutions curse. Impartiality enhancing institutions aim to mitigate the institutions curse through sanctioning those who benefit from opaque transparency and they aim to bolster underrepresented people in key decision making structures through civil society support and community representation.

Others critiques of the institutions curse remain unexplored. Stevens and Dietsche (2008) argue that that there is a risk that subjective assessments of what good institutions are will be based more on ideological perspectives than on scientific knowledge. For example, evidence in the literature indicates that resource rich autocracies outperform democracies but the literature is still populated by suggestions that democracy is important for checks and balances and electoral competition (Collier & Hoeffler, 2006). This is why this paper does not attempt to offer solutions for the institutions curse that are based on ideology.

Another critique advanced by Stevens and Dietsche (2008) is the concern about the process of institutional change, under what conditions do institutions change and why do bad institutions persist? Stevens and Dietsche (2008) argue that it is not clear under what conditions a country changes its institutions, for example, from being predatory to being developmental. In addition, they argue that the chances for positive institutional change are lower in countries where vertical relationships and resource rents are captured by narrow elites.

Hence, the paper understands that institutions are stubbornly persistent (North, 1990). It argues that where institutional changes are proposed, they are mostly likely to be incremental and this means that where institutions are characterized by bad equilibrium, they will mostly likely revert to their original equilibrium especially if local elites do not buy in them completely (Kolstad & Wiig, 2009a).

6. Chapter 2: Transparency and The Institutions Curse: Why Transparency Became a Globalized Norm?

6.1. Why is Transparency Important?

There is consensus in the literature that good enough institutions will eliminate the resource curse which will now be referred to as the institutions curse (Haufler, 2010). One of the most recommended policy prescriptions for ameliorating the institutions curse is a need for transparency and accountability (William, 2011). The underlying assumption is that information empowers citizens to hold public officials accountable (Kosack & Fung, 2014). Transparency is also seen as important to shed light on public revenues, public expenditures, awarding of contracts, public procurement, ownership interests of public officials, awarding of promotions

and key positions in the public sector and the regulation and facilitation of private sector activities (Kolstad & Wiig, 2009b).

In democratic theory, there has been a revival of deliberative democracy which emphasizes publicity and debate as central to political decision making (Lindstedt & Nauren, 2010). Furthermore, in democratic societies, transparency is considered a human right to allow people to be informed about the actions of government and to partake in decision making (Bellver & Kaufmann, 2005).

Bellver and Kaufmann (2005) contend that transparency is also important for human development. They argue that it provides incentives for redistribution and inclusiveness by ensuring that resources are efficiently managed and not captured by the elite. In the same vein, Gillies and Heuty (2011) argue that transparency is also seen as able to bring about change, mitigate resource-driven conflict, facilitate development, reduce poverty and improve state-society relations. By contrast, in predatory states, transparency reforms are seen as likely to be resisted and challenged. In these cases, building alliances with potential beneficiaries of transparency and civil society is important (Bellver & Kaufmann, 2005).

Much of the literature on transparency focuses on the role of transparency in preventing financial crises and in monetary policy-making. It thus focuses on economic explanation of the institutions curse. In economics, the lack of information is mostly associated with market failures (Bellver & Kaufmann, 2005). This is referred to as economic transparency. This is because transparency can also encourage investment and reduce the cost of borrowing. For example, when Nigeria began implementing the EITI, its yields above U.S. Treasury bonds dropped from 13% to 6.97%

between the years 2002 and continued to do so by the year 2006 as well (Gillies & Heuty, 2011). In addition, transparency also affects the borrowing costs of a country (Gillies & Heuty, 2011).

Bellver and Kaufmann (2005) argue that it is only until recently that more attention about informational asymmetries in political markets and the role of transparency in improving public services received attention through the realization of Freedom of Information Laws. This is referred to as political transparency and it is the focus of this paper.

Therefore, disclosure and transparency initiatives were developed to address the lack of transparency. These initiatives originate from environmental disclosure programs and to some extent they have influenced the rise of transparency initiatives (Gupta, 2010; Mol, 2010). They are generally seen as less costly governance or institutional reforms. Due to social demand, voluntary disclosure in particular has also been growing (Bellver & Kaufmann, 2005; Haufler, 2010). The Extractive Industry Transparency Initiative (EITI), the Kimberly Certification Process (KCP) and the Publish What You Pay (PWYP) are all examples of transparency initiatives.

6.2. Definition of Transparency:

Transparency has a variety of meanings and there is no agreed upon definition. Conceptual clarity is thus needed when using the term (Bellver & Kaufmann, 2005; Kosack & Fung 2014). Some international organizations define it as ensuring public access to information. In another definition by Florini (1999) transparency is seen as the release of information by institutions that is relevant to assess those institutions. In this definition, transparency is seen as a mechanism to evaluate and assess public institutions to account for their performance. Moreover, the public

must be able to interrogate the information provided and use it to hold institutions accountable (Bellver & Kaufmann, 2005; Lindstedt & Naurin, 2010).

Kolstad and Wiig (2009b) define transparency as the public access to economic, social and political information that is timely, reliable and accessible to all stakeholders. Similarly, Gillies and Heuty (2011) define transparency as the public disclosure of information in accessible formats. A much broader definition of transparency is defined by Sun Kim et al. (2005:649 in Gaventa and McGee, 2010:13) as

“an openness of the governance system through clear processes and procedures and easy access to public information for citizens [stimulating] ethical awareness in public service through information sharing, which ultimately ensures accountability for the performance of the individuals and organizations handling resources or holding public office”.

When applying a broad definition of transparency one can assume that transparency is necessary because it leads to accountability (Gaventa & McGee, 2010).

Whilst there is some consensus about the definition of transparency in the literature, Bellver and Kaufmann (2005) contend that there is gap of conceptual contributions and there is limited progress on its measurement and empirical analysis. The impact of transparency is also difficult to measure (Gillies & Heuty). In addition, the transparency literature is plagued by methodological challenges that prevent measurement accuracy. It is thus difficult to establish a causal relationship between information disclosure and development outcomes (Gillies & Heuty, 2011). Furthermore, evidence from the literature also suggests that transparency cannot directly affect governance.

Gillies and Heuty (2011) contend that the difficulty of establishing a causal relationship arises because the literature often confuses the measurement of impact and effectiveness. The other common challenge for measurement is sampling because it is difficult to compare countries that subscribe to transparency initiatives with those that do not (Gillies & Heuty, 2011). Furthermore, there are also challenges regarding time consistencies because when examining the impact of TAIs using indices, one needs sufficient time to make conclusions.

Additionally, the biggest challenge relates to attribution (Gillies & Heuty, 2011). Transparency is mostly accompanied by other reforms which can represent potential impacts and provide other explanatory variables. So it is difficult to attribute governance or corruption improvements to transparency. This makes it difficult to avoid endogeneity problems (Gillies & Heuty, 2011).

6.3. The Theoretical Relationship Between the Natural Resource Curse and Transparency:

According to Williams (2009), where transparency exists, accountability can be achieved and natural resources can be a blessing. In contrast, where accountability does not exist, natural resources are a curse because there is no effective mechanisms to monitor the actions of government (Williams, 2009). Williams (2009) argues that the lack of transparency is one of the primary reasons for poor economic growth and not natural resources *per se*.

The principal-agent framework is widely used both by economists and political scientists in the literature to explain information asymmetries (Lindstedt & Naurin, 2010). In these principal agent situations, the principal has the right to know about the agent's behaviour. In politics, the principal refers to the general public and the agent is government or international organizations (Bellver & Kaufmann, 2005). This framework articulates a social contract that confers power to the executive by citizens, who are in turn in a position to demand accountability.

Bellver and Kaufmann (2005) contend that this relationship lies at the core of the development process. Furthermore, that imperfect information causes agency problems between those governing and those that they are supposed to serve, making it difficult for the principal to control the agent. In the natural resource value chain, transparency and the dissemination of information is important to allow different social groups to participate in the decision-making process (Bellver & Kaufmann, 2005).

Transparency is usually subject to severe resistance because it confers power to certain groups in the arrangement (Meijer, 2012). Power can be used to both limit and increase transparency. Transparency is therefore seen as a powerful mechanism to increase the bargaining power of the electorate. It is a means that will see legislatures, the media and civil society better empowered to hold the executive to account about policies, practices and expenditures (Bellver & Kaufmann, 2005).

This is especially relevant in the extractive sector that is usually characterized by strong asymmetries of information. Its governance features informational enclaves where questionable policies and corruption tend to thrive (Gillies & Heuty, 2011). Gillies and Heuty (2011) refer to this as an uneven allocation of power that reflects the centralization of power due to rents. They argue that, “concentrations of information accompany concentration of power” and this is important to understand principal-agent problems (Gillies & Heuty, 2011:31). In different scenarios, the principal and agent can change. But in the case of a “natural resource curse”, the principal is a citizen and the agent is government who is expected to act on behalf of the principal’s interest through elections (Williams, 2009).

According to Haulfer (2010) the information that is worth disclosing in the extractive industry to avoid corruption are the details of the call for proposals and the bidding; the terms and conditions of contracts; revenue flows between companies and governments in the form of taxes, royalties, signing bonuses and fees; pricing decisions; the size and location of reserves; exploration and development and government budgets for distributing resource rents. Haulfer (2010) also argues that transparency is important to ensure that communities are also informed before any extractive activity. For example, this is articulated well by the call for, “free, prior, continuous and informed consent” by NGO campaigns in South Africa (International Commission of Jurists, 2018).

6.4. The Relationship Between Transparency and Corruption:

Corruption is defined by Kolstad and Wiig (2009b) as the abuse of public office for private gain. Although corruption is also subject to conceptual contestation, for the purposes of this paper, political corruption is more relevant. Kolstad and Søreide (2009:214) contend that, “...corruption is the main *development* problem in resource-rich countries”.

Political corruption is defined as the abuse of public office by those who make the rules of the game (Kolstad & Wiig, 2009b). There is a consensus in the literature that the lack of transparency makes corruption less risky and it makes it difficult to apply incentives to make public officials act according to the rules and to select professional bureaucrats based on merit. It also leads to informational advantages that allow easier access to rents and make reform more difficult to achieve. Civic cooperation is also less likely to be achieved and sustained. Furthermore, the lack of transparency undermines social norms and levels of trust between a principal and an agent (Kolstad & Wiig, 2009b).

However, according to Kolstad and Wiig (2009b), the role of corruption in reducing the “resource curse” is poorly articulated and understood. Kolstad and Wiig (2009b) argue that transparency is not sufficient to ameliorate the “resource curse” and should be complemented by other policies. Furthermore, that although there is correlation between high levels of corruption and a lack of transparency, this does not imply that a causal relationship exists. Lindstedt and Nauren (2010) confirm this and argue that there are certain preconditions that need to be met alongside transparency reforms (Lindstedt & Naurin, 2010).

6.5. Transparency is Not Enough:

There is consensus in the literature that transparency is not sufficient to curb the institutions curse (Kolstad and Wiig, 2009a; Carter, 2014). This implies that transparency is conditional. Kolstad and Wiig (2009b) contend that one needs the ability to process the information and incentives to act on the processed information as one condition of transparency. Education is also identified as an important precondition for the ability of people to process information. Lindstedt and Nauren (2010) contend that it can be assumed that the higher the education level, the stronger the capacity of people to access and understand information.

Other important conditions of transparency include the ability of other agents to hold public officials to account, freedom of the press in democracies and the type of information that is provided (Kolstad & Wiig, 2009b). Whistle blower institutions in the form independent oversight bodies that encourage public officials to impart information are also important (Bellver & Kaufmann, 2005; Lindstedt & Nauren, 2010). In addition, a capacitated civil society is also integral (Bellver & Kaufmann, 2005). Such capacity is both financial and political.

Furthermore, the enactment of laws that can institutionalize transparency is also seen as important to ensure that a transparent institutional framework is embedded into the system so that it is not subjected to the discretion of different governments (Bellver & Kaufmann, 2005). Moreover, political transparency is more effective where there already is some degree of political competition (Bellver & Kaufmann, 2005).

Beyond this, Gillies and Heuty (2011) argue that a country's structural context also matters for transparency reforms. This includes a country's political and governance environments as exogenous explanatory variables. For example, power relations, the social contract or political will. For example, in the case of political will, they argue that transparency can affect political will and political will is impacted by transparency.

Additionally, Lindstedt and Nauren (2010) argue that transparency must be accompanied by the "accountability and publicity condition" and that in fact, accountability is primarily a function of publicity more than it is about transparency. Lindstedt and Nauren (2010) contrast transparency and publicity to explain the relationship between transparency and corruption. They define transparency as a concept that largely captures the accessibility of information that makes it possible for outsiders to acquire information that will lead to the forming of opinions, actions and processes (Lindstedt & Nauren, 2010).

In contrast, publicity enables information to be communicated to and received by the principal. In the relationship between politicians and citizens, transparency implies that documentation about key information about politicians and their actions is available to citizens and publicity enables the content of this information to be made known by citizens (Lindstedt & Nauren, 2010). They conclude that transparency increases the chances of publicity and that if left under exposed,

there is no automatic link to publicity. In the case where there is lack of demand and information is only targeted to a specialized audience, the chances of information being publicized are less and so are the chances of achieving accountability (Lindstedt & Nauren, 2010).

Lindstedt and Nauren (2010) further argue that mediators in the form of civil society are important for publicizing information. Mediators include mass media and non-government organizations that have the ability to process information for easier public consumption in the form of newspapers, radio or television.

However, Lindstedt and Nauren (2010) argue that the effectiveness of mediators such as the media will be limited if it is corrupt and not able to report without fear or favour of political elites. Furthermore, non-governmental organizations are sometimes subject to collective action problems when they only represent a few people. These underlying conditions contribute to make information costly obtained and not “costlessly obtained” as envisioned (Lindstedt & Nauren, 2010:304).

Moreover, Lindstedt and Nauren (2010) argue that although publicity is an important intervening variable for transparency to lead to accountability, it is also not a sufficient one. In this regard, Carter (2014) contends that activities to strengthen citizen capabilities to access information through communication campaigns and the likes are important. Furthermore that this is necessary to bridge data inequalities that arise in the form of class, race, gender, education and geography.

Heald (2012) provides another condition for transparency to be effective and argues that it also depends much on whether transparency is about events or a process. It is important to be transparent about decisions as early as possible to encourage proactive rather reactive

transparency on the part of government. Heald (2012) also underscores the importance of context and the underlying power relationships between those who demand transparency and those who are asked to provide it.

Miejer (2012) underscores the importance of context and argues that a culture of secrecy can also be deeply rooted in historical traditions and traditional state-society relations. This is mainly because institutional rules are a result of historical trajectories. This thinking also applies to bureaucratic structures which have a culture of secrecy. Miejer (2012) therefore concludes that changes in transparency will have an impact on institutional rules and vice versa. In light of this, Miejer (2012) argues that transparency is thus a value of its own that is not exclusive to the domain of democratic governance. This has implications about the potential value of transparency in non-democratic and semi-democratic countries. Similarly, Al Faraque (2006) also argues that the governance structure, institutional setting and political culture are the bedrock of accountability.

Furthermore, Al Faraque (2006) distinguishes between soft and hard law. The latter focuses on a mandatory approach to disclosure and the former focuses on a voluntary approach. Al Faraque (2006) contends that for disclosure requirements to be effective, they should be incorporated in the relevant laws of a country. In addition, that the use of soft law gives companies and governments the choice to negate or accept transparency requirements and that this can be problematic (Al Faraque, 2006).

The decentralization of revenue management in the extractive sector is also an important governance structure that can contribute to the achievement of accountability. This means that government must be transparent to local communities and include them throughout the decision

making of the value chain including the bidding and licensing process (Al Faraque, 2006). In light of this, Gaventa and McGee (2010) distinguish between upstream and downstream transparency to describe transparency at the macro and micro level. They argue that the lack of transparency during the bidding process can have negative implications for subsequent lack of accountability in the production and revenue allocations because secretly granting contracts reinforces the need for confidentiality clauses (Gaventa & McGee, 2010).

Furthermore, Gaventa and McGee (2010) also distinguish between *ex ante* accountability and *ex post* accountability. The latter occurs when rules, processes and plans are made transparent in advance and the former refers to accountability that occurs after the fact. They call for an improvement in *ex ante* accountability that should allow transparency to take place early in the value chain.

Other scholars such as Ofori and Lujala (2015) distinguish between information disclosure and transparency to explain that disclosure of information is not enough to achieve accountability because disclosure focuses on a narrow view of transparency. They also further distinguish between effective transparency and nominal transparency to underscore that if citizens cannot access and understand information, it is of little value to them (Ofori and Lujala, 2015). Effective transparency ensures that those who consume the information are able to process the information and subsequently base their actions on the information. On the other hand, nominal transparency makes information available that is not useful and hence does not ameliorate information asymmetries (Ofori and Lujala, 2015). They describe the gap between effective and nominal transparency as an illusion of transparency.

For example, the success of the Ghana Extractive Industry Transparency Initiative (GHETI) was hindered by highly technical English which concealed information through the use of difficult vocabulary (Ofori and Lujala, 2015). Ultimately this presented itself as illusory transparency. Ofori and Lujala (2015) contend that the prospects of illusory transparency are a real possibility because while government actors consider themselves as being transparency, it is quite a common phenomenon for extractive affected communities to lack the access to such information. Ofori and Lujala (2015) recommend that transparency reforms take a more holistic approach to achieve accountability by looking beyond the supply side of information to address demand challenges. Furthermore, that this calls for a more nuanced information-disclosure agenda at the local level.

6.6. The Relationship Between Transparency and Accountability:

Similar to transparency, accountability is also a concept that dominates the political science literature. Bellver and Kaufmann (2005) contend that transparency is closely related to accountability and that the purpose for demanding transparency is to allow citizens, markets, and governments to hold institutions accountable for their actions. However, Gaventa and McGee (2010) argue that defining accountability is a difficult endeavour and that the relationship between transparency and accountability is a poorly understood one. They define accountability as the process of holding actors responsible for their actions (Gaventa & McGee, 2010). More specifically, they define it as the process that targets public, private and civil society organizations to be held responsible for executing their powers according to a defined standard (Gaventa & McGee, 2010).

There are different ways to achieve different types of accountability. Gaventa and McGee (2010) distinguish between vertical and horizontal accountability. Vertical accountability refers to forms of accountability that are between citizens and the state and are enforced through electoral participation. On the other hand, horizontal accountability refers to internal checks and balances between various organs of the state that also includes the oversight of state agencies by independent public bodies to be held responsible for executing their powers according to a defined standard (Gaventa & McGee, 2010).

Goetz and Jenkins (2001) further distinguish between *de jure* accountability and *de facto* accountability. The latter refers to accountability that occurs in practice and not as required by law or intent. The distinction is important to describe the reality of a particular context as opposed to the formal rules that describe what ought to be.

Kosack and Fung (2014) also distinguish between a long and short route to accountability. In the short route to accountability citizens engage directly with service providers. In the long route, citizens use elections and advocacy to pressurize and influence policy makers and politicians to improve service delivery. A combination of both is also possible.

There are also many scholars who attempt to explain how transparency leads to accountability. Lindtedt and Nauren (2010) argue that accountability is different from transparency and publicity. In addition, that accountability requires more than exposure. Lindtedt and Nauren (2010) further argue that accountability implies that where there is misconduct a sanction must be imposed on the act. Similarly, Fox (2010) distinguishes between two faces of accountability, answerability and answerability that is accompanied by sanctions, noting that these two have different impacts on the achievement of accountability.

Lindstedt and Nauren (2010) contend that the most important sanctioning mechanism available for citizens is through elections. This type of accountability is referred to as political accountability and is usually accompanied by legal accountability through a functioning judiciary. It is distinguishable from administrative and constitutional accountability (Goetz & Jenkins, 2001). Furthermore, Lindstedt and Nauren (2010) argue that democracy and the rule of law are crucial for achieving political accountability. Moreover, that transparency will be less effective in combating corruption if it is not accompanied by institutional and other circumstances that are favourable to achieving accountability such as democracy.

In addition, Lindstedt and Nauren (2010) also distinguish between agent controlled transparency and non-agent controlled transparency to determine which type of transparency is more important to achieve accountability. Agent controlled transparency refers to self-imposed or externally imposed requirements to release key information to seek legitimacy in the eyes of the principal. On the other hand, non-agent controlled relies more on mediators such as investigative journalists. They conclude that agent controlled information is less effective in achieving accountability and to limit corruption compared to a free press (Lindstedt and Nauren, 2010).

Furthermore, Lindstedt and Nauren (2010) argue that these findings have an implication on the type of reforms that are important for the reduction of corruption. They argue that in contexts where there is low levels of education and press freedom and in semi-democratic political systems, transparency reforms must be accompanied by reforms to strengthen the capacity of people to access and process information. Moreover, they argue that imposing sanctions are also important reforms to reduce corruption (Lindstedt & Nauren, 2010). This means that on its own, transparency is not enough.

Similarly, Bellver and Kaufmann's (2005) contend that the role of information disclosure should not replace the provision of voice and participation mechanisms that aim to empower communities to hold officials accountable. They also recommend that top-down oversight strategies should also be accompanied by bottom-up ones to improve corruption and achieve accountability.

Gaventa and McGee (2010) argue that there is a growing need to recognize and institutionalize a form of accountability that goes beyond elections. These are citizen-led forms of accountability with an end goal of enabling citizens to exercise their voice through other means. Goetz and Jenkins (2001) refer to this as hybrid or diagonal forms of accountability.

According to Fox (2015) diagonal accountability refers to hybrid combinations of both vertical and horizontal oversight agencies. It involves the direct participation in or management of official oversight bodies in the form of state-society power sharing bodies that are created in a top-down manner as in the case of "invited spaces" or power sharing institutions (Fox, 2015). Goetz and Jenkins (2001) contend that public sector institutions which are responsible for monitoring government through horizontal accountability are sometimes under capacitated and not open to citizen participation. They further argue that if hybrid forms of engagement that include citizens are to be established they have to be given legal standing within institutions of public sector oversight (Goetz & Jenkins, 2001).

Gaventa and McGee (2010) argue that diagonal accountability is important and able to improve demand side and bottom-up accountability. Simply put, citizen engagement in oversight roles is important because as stated by the WB (1999: 3 in Goetz & Jenkins, 2001:365), "If . . .

horizontal institutions are the nerves and muscles of corruption control, why would politicians let them function effectively”.

In addition, diagonal accountability creates a blur between horizontal and vertical accountability and allows power dynamics to change away from political elites to amplify the voice of vulnerable groups. This is especially necessary because elections are periodic and are not sufficient as a form of accountability (Ackerman, 2004). They also represent the long route towards accountability and are therefore not as efficient. Additionally, free and fair elections are subject to structural and context specific difficulties. This calls for more depoliticized forms of accountability and the legal institutionalization of participative mechanisms because this will create a more active enforcement of accountability (Ackerman, 2004).

Ackerman (2004) builds on the concept of diagonal accountability and suggests that “co-governance” is important to ensure that social actors are invited to participate in the core activities of the state. Ackerman (2004) further contends that social protest and consultation are insufficient forms of accountability. Moreover, Ackerman (2004) argues that the exclusion of citizens in key decision making and oversight bodies is usually in the interest of marketization strategies and this hinders active participation of citizens in the form of “exit”. One can conclude that there is a need to move beyond exclusive elite domains by the executive of acquiring accountability towards citizen-led accountability that prioritizes the voice of excluded individuals due to skewed power imbalances in some contexts. Transparency initiatives that are mainly found in construction, environmental and extractive sectors attempt to bridge this gap and this paper will show how.

Critique of Transparency:

Heald (2012) argues that there's a narrative that transparency is a cure to all governance problems. This gives transparency the appearance of a panacea and this is problematic. Furthermore, Heald (2012) also warns against over exposure and argues that too much transparency can also be problematic because it has the potential to expose sensitive information that can increase rather than curb corruption.

Moreover, Etzioni (2010) criticizes transparency for being overvalued and without a solid ideological basis because it cannot fulfill the functions it is said to achieve. In addition, that this is especially in light of the fact that there is a dearth of studies about transparency and its impacts with little empirical studies as well.

Scholars such as Gillies (2010) also agree with this assertion by questioning why the concept has gained so much support and popularity despite a lack of empirical studies. Etzioni (2010) also argues that most available findings about transparency are based on voluntary transparency mechanisms at the community level that are not government imposed and none of these studies indicate that transparency should replace regulation. Therefore, Etzioni (2010) suggests that for transparency to have more impact, more government enforced regulation is necessary.

This argument raises questions about the possible veracity that voluntary transparency initiatives have. Etzioni (2010) argues that transparency is a regulation itself but perhaps too light and hence limited in its reach as a form of regulation. Kolstad and Søreide (2009) agree that voluntary initiatives are not enough to effect accountability because too much onus is given to the government to choose whether or not it should be accountable and this does not change its

incentives in any meaningful way. It thus important to unpack how transparency became a globalized norm despite its weaknesses.

6.7. The Rise of Transparency as a Global Norm?

The call for transparency originated from the anti-corruption campaign pushed by the WB and UN Global Compact and the business and conflict agenda in Africa (Haufler, 2010). However, the agenda did not have a “business and human rights agenda” which is problematic especially for the recognition of community rights and their interaction with government and corporations. Other organizations that formed part of this agenda included Global Witness, Amnesty International, Human Rights Watch and the Fund for Peace and launched campaigns about the role of business in conflict affected countries (Haufler, 2010). As the call for transparency intensified, the confidentiality clause, which had become a standard practice in the extractive industry became increasingly problematic. Transparency International led the anti-corruption campaign and Global Witness directed more focus on the extractive industry with its report on the Angolan Oil industry (Haufler, 2010).

Transparency has emerged as a highly recommended policy response to address poor governance and the “resource curse” (Gillies & Heuty, 2011). Many international actors and “investors” have rallied behind the making of transparency as a global norm despite its limitations especially in predatory states that have high corruption and authoritarian rule (Bellver & Kaufmann, 2005).

Haufler (2010:56) argues that the idea of transparency as a global norm can be understood as a product, “of its complementarities with broader global norms that characterize the contemporary normative environment, the entrepreneurship of particular actors, and the intersection of different agendas and transnational networks”. This argument emphasizes the centrality of actors that are

behind the promotion of transparency. Furthermore, Haufler (2010) contends that transparency underscores market efficiency and bureaucratic rationality at the expense of government expansion because it relies on liberalism which confers more legitimacy to the private sector. Hence, transparency is viewed as the less costly way to regulate the private sector.

In addition, Haufler (2010) compares the global normativity given to transparency with corporate social responsibility because it is seen to be the better fit for the prevailing system. The system is basically mostly characterized by the privileging of market-based solutions to social and environmental problems (Gupta, 2010). These market-based solutions can be seen as substitutes for more threatening authoritative sanctions (Fox, 2010).

Moreover, Haufler (2010) argues that these ideas are spread through a process in which particular NGOs set an international agenda and then further develop coalitions with states and international organizations. Haufler (2010) contends that activists in the global North strategically deploy ideas and are able to promote new norms to manipulate the international agenda in favour of an audience that primarily belongs to the North. It is this audience in the form of “investors” and consumers who have the influence to make sizeable shifts in the market (Haufler, 2010). It follows then that the legitimacy of policies like transparency become legitimized in the North and are transported to host governments in the developing world. This underscores the reality of power relationships that are present internationally.

Transparency can also be as seen as part of the “procedural” trend in global political affairs which makes political issues about technicalities (Gupta, 2008). However as Kolstad and Wiig (2009a) argue, the approach taken by international institutions to export technical reforms to developing countries denies the importance of institutional context.

In agreement with other scholars, Gillies (2010) contends that the ascendance of oil sector transparency served the reputational agendas of powerful actors such as international oil companies (IOCs) and International Financial Institutions (IFIs) in the North. The oil industry in developing countries has always been attractive for profit making and investment. However, they argue that IFIs have recently been subjected to increased scrutiny by civil society and this began to pose significant challenges for reputational risk. In this context, the support behind oil sector transparency was seen as a useful, low cost tool for their public image. The EITI was thus created in the context described above.

7. Chapter 3: Evaluating the EITI

7.1. The History of the EITI:

The EITI has its origins in the UK when it started out as a foreign policy proposal by Tony Blair at the *World Summit on Sustainable Development* in 2002 (Haufler, 2010). It is part of global trend of “governance by disclosure” (Sovacool, et al., 2016). It was created following the conclusion of the Publish What You Pay Campaign (PWYP).

PWYP is a coalition that consists of 800 NGOs which helped establish the EITI. PWYP was established after the Global Witness report of 1999, *A Crude Awakening* (Wilson & van Alstine, 2014). This report exposed the role of oil and banking industries and their complicity in looting state assets during Angola's forty-year war (Alstine, 2014). Today, the PWYP plays a watchdog role of the EITI to mobilize civil society to make demands about its processes (Alstine, 2014).

The EITI secretariat is based in Oslo in Norway and is funded by supporting governments and companies. It has a board consisting of 20 members which provides oversight to participating

countries. There is a global EITI conference that takes place every two years with representatives from all participating countries. This is also where the EITI board is also elected (EITI, 2015).

The EITI is among many other transparency and resource governance initiatives such as the PWYP campaign, Revenue Watch Institute, Natural Resource Charter, Resource Governance Index, Africa Mining Vision and Africa Progress Panel (Wilson & van Alstine, 2014).

7.2. How Does the EITI Work?

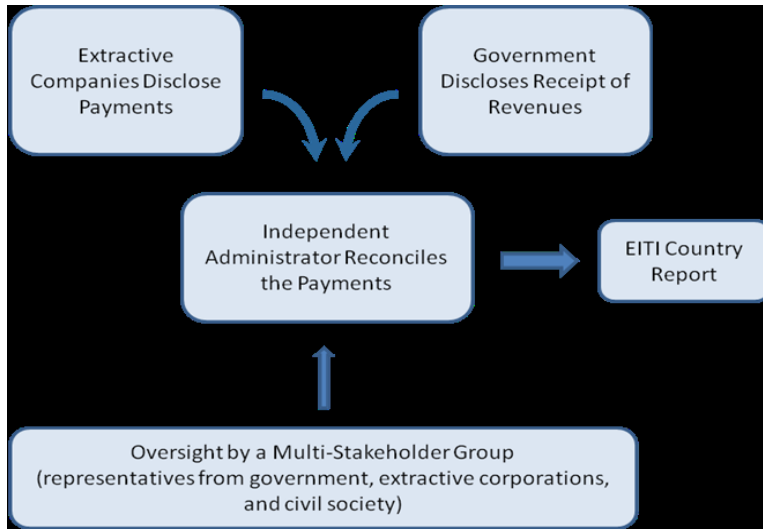
The EITI is a voluntary global standard that aims to ensure that companies disclose payments to governments. It is distinguishable from the PWYP that advocates for the mandatory disclosure of revenues (Alstine, 2014). Furthermore, the EITI is a government driven process that requires governments to apply to join on a voluntary basis (Wilson & van Alstine, 2014). Overtime, it also mandates the disclosure of other payments including in-country financial payments. Moreover, the EITI also supports training and capacity building dialogue at the national and regional levels. The entire process is overseen by a MSI which makes decisions about the daily operation of the EITI process (Wilson & van Alstine, 2014).

The EITI has “principles” which were agreed upon by various stakeholders in 2003 at the *Lancaster Conference* in the United kingdom. These principles are the cornerstone of the EITI and highlight the importance of resource wealth to sustainable development, economic growth and the reduction of poverty (EITI, 2016). These principles regard transparency in extractive government revenues and expenditure as a way to initiate public debate to improve public financial public management and accountability. In addition, that the achievement of transparency must be set in a context that respects contracts and laws of a particular context (EITI, 2016).

The EITI also has a set of “requirements” which were first known as the “rules” in 2009. These were revised in 2011 to be known as the EITI “standard” (Alstine, 2017). The rules of the EITI basically describe how the EITI works as illustrated in Figure 1. and implementing countries have to meet these minimum requirements for compliance (Ölcer, 2009). Validation occurs after two years and in four phases: signing up, preparation, disclosure and dissemination.

The rules evolved over time to include first, the need for oversight by a MSG involving government, companies and full, independent, active and effective civil society participation (EITI, 2015). Second, the disclosure of the legal and institutional framework including the allocation of contracts and licenses to understand how the fiscal regime is structured. In 2017, the requirement for the disclosure of beneficial ownership was also included. Third, the disclosure of all exploration and production to enable stakeholders to be knowledgeable about the potential of the sector. Fourth, the comprehensive disclosure of revenue paid by companies and received by governments including taxes and royalties at the subnational level. Additionally, the disclosure of all payments must be disaggregated (EITI, 2015). Fifth, the EITI requires transparency in revenue allocations to enable stakeholders to understand how revenues are recorded in national and subnational levels. Sixth, it requires the disclosure of social and economic expenditure at the national and subnational to determine the impacts of the extractive industry. Seventh, it requires that information be disseminated widely enough to raise public awareness and debate. Finally, the standard also outlines deadlines for the publication of EITI reports for compliance and explains the steps for countries that wish to apply in future (EITI, 2015).

Figure 1. How the EITI works (Ölcer, 2009:14).



As of 2018, the EITI is being implemented by 51 countries (EITI, 2018). It currently has 24 member states in Africa which represent almost half of the global total. The number of countries that are implementing the EITI continue to increase yearly. In addition, the investment directed to EITI implementation has rapidly increased. It currently stands at \$2.4 trillion up from \$1.67 trillion in 2016 (Sovacool et al., 2016; EITI, 2018). The increasing amount of investment and implementing countries is evidence that transparency has indeed become a global norm and more so in the developing world. The EITI is also supported by Extractive Companies, OECD countries and several International Organizations and Financial Institutions (Ölcer, 2009). Support for the EITI is done bilaterally or through the EITI multi-donor trust fund which is managed by the WB (Wilson & van Alstine, 2014).

The EITI countries are divided into candidate and complaint countries. If a country meets these requirements within two years, it will become compliant and if not it will be suspended (Aaronson, 2011).

7.3. Transparency and the EITI:

Several scholars cite different reasons for the creation of the EITI thus making it difficult to theoretically link it to the “natural resource curse” directly. However, there are also several studies in the literature that indicate that poor economic growth is a consequence of a lack of transparency (Sovacool, Walter & van de Graaf, 2016). The EITI is thus primarily seen as a tool to promote global transparency for the oil, gas and mining sectors.

Sovacool et al. (2016) describe the EITI as tool that was developed to improve domestic governance in resource-rich countries to improve transparency and achieve accountability to the collection of revenues. Some proponents argue that accountability can simply be achieved if extractive companies publicly disclose their payments to governments (Haufler, 2010; Wilson & van Alstine, 2014). Furthermore, that the EITI through its transparency requirements, will improve the management of natural resources, reduce corruption and mitigate conflict. These benefits will extend beyond the extractive industry and penetrate a country's institutions for the better. As a consequence, citizens will be empowered to demand a more equitable and sustainable development (Haufler, 2010).

A survey of the literature shows that the fundamental assumption behind the EITI is that transparency and accountability can improve institutions and mitigate negative impacts from resource wealth (Corrigan, 2014). It is thus reasonable to conclude that a major theoretical goal of the EITI is to mitigate the institutions curse. The EITI is therefore a good example of an international initiative that aims to combat the institutions curse and hence the subject of analysis of this paper.

Moreover, in the literature, the EITI is described as a public-private partnership/multi-sectoral institutional arrangement that brings together resource-rich countries, TNOCs and civil society (Sovacool et al., 2016). The goal is to establish partnerships to manage conflict (Aaronson, 2011). Additionally, the EITI is supposed to provide a platform where accountability and coordination are horizontally organized and are not dictated by power dynamics in decision making especially seeing that power dynamics are an important element of the institutions curse (Aaronson, 2011)

There is also consensus amongst scholars that the key to the EITI is its MSI/MSG (Mainhardt-Gibbs, 2010; Sovacool et al., 2016). The EITI requires multi-stakeholder oversight that involves the government, extractive companies and a full, independent, active and effective participation of civil society (EITI, 2015). The MSG is responsible for overseeing the implementation of the EITI. The government must ensure that the invitation to participate in the group is open and transparent, that all stakeholders are adequately represented although it is not required that they be equally represented (EITI, 2015).

The MSG may include representatives from trade unions, parliamentarians, relevant government agencies, civil society, private sector or the media. Each stakeholder has the right to appoint its own representative. The EITI recommends that a consideration by government should also be made to establish the MSG's legal basis (EITI, 2015).

To successfully fulfill its mandate the MSI must be effective, legitimate and be able to provide accountability (Magna & Gatmaytan, 2017). Furthermore, the MSG must also have the capacity to implement its duties which involve the undertaking of outreach activities with civil society and companies in the form of communication about EITI information to the broader public and their constituencies. Furthermore, duties of the MSG also include the approval of work plans,

EITI Reports and annual progress reports (EITI, 2015). However, whilst MSGs are tasked with the role of policy oversight and implementation and not policy bargaining or making. They are not meant to replace existing government institutions (Truex & Søreide, 2010).

Studies on the MSI show that a strong civic space, political will and the participation of the private sector are significant for its successful implementation (Magna & Gatmaytan, 2017). The local country context may also hinder or facilitate implementation (Truex & Søreide, 2010). In addition, Truex and Søreide (2010) argue that since initiatives like the EITI are foreign constructs, it is important for MSGs to obtain local legitimacy to avoid becoming redundant. It is therefore important to ensure that there is always a balance between international pressure and local ownership.

One can conclude that the EITI has the potential to become an arena that can achieve hybrid accountability because it is a power sharing institutional arrangement. This is done through the MSI where government can invite civil society and TNOs in an attempt to achieve accountability (Goetz & Jenkins, 2001). The MSI thus attempts to collapse the distance between the short and long route to accountability (Kosack and Fung, 2014). In doing so, the MSI has the potential to compensate for weak horizontal and vertical accountability by offering a platform in which citizens, through CSOs, can directly engage with government and companies to obtain accountability in the extractive sector (Gaventa and McGee, 2010).

7.4. The Impact of EITI in Implementing Countries:

The EITI is reported to have *inter alia* strengthened governance systems, guided policy reports, identified beneficial ownership of extractive revenues to assist with Illicit Financial Flows (IFFs), transparency in commodity trading and improved access to data (Magna & Gatmaytan, 2017).

Some studies have validated these claims. However, some studies refute the claims that the EITI has made any significant difference in resource governance.

One the most cited benefits of the EITI is its impact on the mineral investment climate of a compliant country (Malden, 2017). This also partly explains why some countries have voluntarily joined the EITI. Countries have a strong incentive to join the EITI to improve their reputation and reduce the perceived risk of investing in their mineral sector (Sovacool et al, 2016; Malden, 2017). Hence, the EITI is no longer regarded as a threat to competitive advantage even by companies. Instead it is now seen as important for their corporate reputation (Sovacool et al., 2016). Another benefit of the EITI also includes increased Foreign Direct Investment (FDI) (Sovacool et al., 2016). Adherence to the EITI is mostly seen by international actors and investors as signaling the intention to improve the business climate (Aaronson, 2011).

Furthermore, there is also some evidence that there is some improvement in civil society participation in EITI implementing countries through the MSG (Mainhardt-Gibbs, 2010; Wilson & van Alstine, 2014). For example, the Liberian government uses the EITI reports as a basis for discussion with citizens about corruption, distribution of revenues and accountability. In addition, the Mongolian government uses the EITI as a platform to discuss governance related matters such as whether the government should obtain a stake in mining or tax it (Aaronson, 2011). There is hope that the over time, the governance skills learnt from participating in the EITI will spill over into other sectors of the economy and institutions.

7.5. The Critique of the EITI:

The EITI is often critiqued for not clearly outlining how transparency leads to accountability (Wilson & van Alstine, 2014). Many scholars criticize it for its lack of a robust theory of change

that can explain how it will contribute to societal change. EITI compliant countries also do not outperform other non-compliant countries on resource governance (Sovacool et al., 2016). In addition, the EITI is also critiqued for its focus on the extractive industries only and this is seen by Sovacool et al. (2016) as a narrow view of transparency. It excludes other aspects of the oil, gas and mining value chain such as environmental impact assessments, project siting and the displacement of communities.

The voluntary nature of the EITI has also been critiqued by many scholars. Governments are encouraged but not obliged to adhere to the principles of transparency. There are no available sanctions for countries that do not comply with the EITI requirements except for suspension. According to Sovacool et al. (2016) countries have an incentive to join and gain increased prestige at a low cost because in the worst case scenario they have nothing to lose. Hence, Wilson & van Alstine (2014) call for a mandatory transparency standard. The soft law nature of the EITI can prevent positive spillovers into national and international hard law to bring about substantive change in policy and regulation (Alstine, 2014).

The EITI has also been critiqued for its lack of subnational implementation especially at the local level and directly to mining affected communities where it is most relevant (Mainhardt-Gibbs, 2010; Wilson & van Alstine, 2014). Subnational reporting is important to disclose information about project level data, social expenditures and contracts (Wilson & van Alstine, 2014). Although the EITI currently includes this requirement, its current framework for subnational reporting does not penetrate enough to the local level.

In an African context where some traditional leaders resist the right for communities to exercise their voice and achieve political accountability, subnational reporting can stimulate debate and

create a demand for communities to hold government and MNCs accountable (Wilson & van Alstine, 2014). In addition, subnational reporting is also important in contexts where there is unequal spatial distribution of resources and unclear distribution of rents (Casparly, 2012). Furthermore, the EITI is critiqued for being unable to make transparency work for sustainable development especially at the local level where communities are mostly exposed to the extraction projects taking place on their land (Wilson & van Alstine, 2014).

Another common critique of the EITI is its inability to deter corruption (Corrigan, 2014). Corrigan (2014) contends that this is where the distinction between transparency and accountability is important because while the EITI has increased transparency, improvements in accountability are not easy to achieve. As Kasekende, Abuka and Sarr (n.d.) contend, that without proper accountability mechanisms, there will be no consequences for corruption and that this may hinder the EITI's goal. Beyond corruption, the EITI has also been unable to reduce violence and maintain political stability (Corrigan, 2014).

Moreover, Sovacool et al. (2008) criticize the timing of EITI transparency requirements. They argue that corruption begins at the early stages of the extractive value chain as opportunities for corruption can arise during the exploration, development, construction, operation and exporting stages and that the EITI neglects transparency in areas where corruption is most rife. On the other hand, Bracking (2009) argues that the lack of transparency at the end of the supply chain in the home countries of MNCs and TNCs is another weakness of the EITI that symbolizes the hypocrisy of Northern governments.

Whilst the extractive sector is identified as a key sector that is targeted by IFFs, the EITI is critiqued because it is unable to monitor the flow of IFFs and thus unable to identify revenues

that are illegally or illegitimately transferred for private gain. Therefore, Sovacool et al. (2016) contend that elements of tax justice should be incorporated into the EITI. Similarly, Wilson and van Alstine (2014) also support this assertion and contend that the EITI must go beyond revenue transparency to include elements of contract transparency and fair taxation. Bracking (2009) contends that Africa's poor economic performance is not only attributable to corruption, it is also a result of inequitable mining codes and is less about poor governance suggesting that the EITI might be prioritizing the wrong issues.

There are also significant oil producing countries which have not yet joined the Country including Angola, which inspired Global Witness' call for the establishment of the EITI. For example, the United States has been an EITI candidate since 2014 and China has also refrained from partaking. Sovacool et al. (2016) argue that this is a double standard on the part of the Global North since they are also not without transparency concerns. For example, to improve transparency, the U.S. has instead opted to establish the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and the European Union adopted the Accounting Directive of 2013 which are mandatory rules for their extractive sectors. Sovacool et al. (2016) therefore questions the effectiveness of the EITI in the absence of global pacesetters.

Furthermore, scholars agree that one of the most controversial aspects of the EITI is the role of civil society in oversight, monitoring and its participation in the MSG (Alstine, 2017). The success of the EITI's MSG is contingent on the effectiveness of civil society. However, it has been reported in several countries that civil society's role is sometimes hindered by intimidation. For example, civil society member sometimes have their travel permits denied and some have also been harassed and imprisoned (Sovacool et al., 2016). In 2014, the President of Azerbaijan, Ilham Aliyev, enacted a series of constitutional amendments that constrained the operation of

civil society organizations and increased their risk of being shut down. Subsequently, Azerbaijan was suspended from the EITI due to a lack of satisfactory civil society engagement in the process (EITI, 2017).

There is evidence that although civil society is an important stakeholder in the EITI process, it tends to become a silent partner and therefore limits the ability of the EITI to become a formidable tool against corruption (Sovacool et al., 2016). Civil society is not treated as an equal partner in the EITI and this is problematic (Öge, 2016). Public scrutiny is the most compelling component of the EITI (Corrigan, 2014). However, civil society needs to be given a greater role through the provision of more information and participation. Furthermore, the public and legislators must be made more knowledgeable about the EITI (Corrigan, 2014).

For example, an EITI evaluation in Madagascar found that the lack of civil society participation allows mining companies to override efforts of good governance, transparency and engagement with communities (Sovacool, et al., 2016). The lack of civil society participation is deemed to be one of the major setbacks of the EITI. This is because the EITI does not obligate the implementing country to engage with its citizenry on extractive revenues and this is more apparent in governments that resist democratic practices. Sovacool et al. (2016) conclude that this is why it is important to not overestimate the utility of multi-sectoral institutional arrangements to achieve accountability.

Caspary (2012) argues that achieving accountability will be difficult in contexts where the necessary political, legal and institutional improvements have not taken place (Caspary, 2012). The EITI and its focus on transparency is likely not able to address the political and economic structural constraints such as a free media and civil society (van Alstine, 2014). Wilson and van

Alstine (2014) provide further explanation for why context matters to make the EITI more impactful.

Firstly, political will and the way in which it is gained and maintained in a given context will determine the impact of the EITI. Government ownership of the EITI is also important for its success (Alstine, 2017; Magnoa & Gatmaytan, 2017). This is because the drivers that led to the decision to join the EITI may change and it may become more difficult to maintain the momentum for deeper and meaningful implementation through reforms.

Secondly, the institutionalization of the EITI is important. Therefore, it may be necessary to have reforms and institutions in government that will enable effective EITI implementation at the national and local level (Alstine, 2017). Thirdly, the EITI reports matter. They must be timely, accessible, understandable and easily disseminated. Additionally the public and legislators must be aware of the EITI reports in all regions. Finally, a strong private sector support is also needed to implement the EITI successfully.

Bracking (2009) agrees that a stakeholder analysis of the various interests in the EITI is imbalanced and that the underlying reliance on the liberal consensus theory which suggests that everyone can be winners is problematic. Furthermore, Bracking (2009) argues that the development of the extractive industry is located within the Bretton Woods Institutions that strategically benefits MNCs at the expense of the broader public and labour requirements.

In this context, Bracking (2009) contends that the EITI elevates the position of elites and is unable to tackle corruption. Therefore, the EITI's ability to create impartiality enhancing institutions is questionable (Kolstad & Wiig, 2009a). Instead, Bracking (2009) argues that the EITI drives stereotypes about the governance of the Global South whilst concealing the

exploitative nature of the Global North's extractive companies (Bracking, 2009). Consequently, corruption is made to be seen as a public sector problem only and leaves the private sector to get off scot-free. This denies the fact corruption can also originate from within the global relationship.

Bracking (2009) therefore warns that tools such as the EITI can delegitimize the Global South and their politics. In the pursuit of decolonization and redistribution of wealth, the conversation can degenerate in substance and become mostly about corruption. The EITI can thus be seen as a tool that places companies and governments in powerful positions to not invest in expensive public participation processes (Smith, Shepherd & Dorward, 2012).

In light of this argument, the EITI is rather a small commitment when compared to the benefits of the neo-liberal regulatory regime in Africa. By placing the establishment of the EITI in the Bretton Woods Institutions context, a key policy of Capitalism, Bracking (2009) supports the assertion that the EITI is a low cost solution for the system's failures. Furthermore, Bracking (2014) contends that the construction of neo-liberal forms of good governance alongside a Capitalist system will continue to breed corruption. The EITI can therefore also be seen as a reformist initiative that seeks change incrementally (van Alstine, 2014). However, van Alstine (2014) argues that it may be an important step in the resource governance agenda and that it is important to acknowledge that institutional reforms may take prolonged periods of adjustment and the outcomes of the EITI may only be reaped in decades to come (Öge, 2016).

Bracking (2009) also criticizes the EITI for using an imagined community in the form of civil society to fulfill its oversight role in the MSG. The MSG relies on national NGOs to represent local communities. The EITI has therefore been criticized for high centralization which limits

participation from local communities making it elitist (Alstine, 2017). This is problematic because the role of local communities is important to address the institutions curse and excluding them can have detrimental consequences (Lawera, Lukas & Jørgensen, 2017).

At the local level, institutions, power dynamics and politics are characterized by culturally rooted chieftaincy, conflicts, self-interest and unaccountable local institutions that impedes people's access to mining benefits that should reduce poverty and lead to socio-economic development (Lawera et al., 2017). In a context of decentralized despotism in which communities have proven that their voice can make a significant change, the role of local institutions is an understudied subject in the institutions curse (Luthango, 2018). The consequence is that national policies become out of touch with the realities on community level. For example, in advocating for the right to consent, the Xolobeni community in South Africa, has shown that mining affected communities should be equal stakeholders in resource governance (Luthango, 2018). Decentralization creates new arenas of rent-seeking at local and national levels which will need local communities to be empowered to achieve accountability (Lawera, et al., 2017).

Successful implementation of the EITI is also more difficult in authoritarian or transitional countries where civil society is restricted by financial, technical and bureaucratic constraints to exercise their whistleblowing and monitoring capacities (Öge, 2016b; Alstine, 2017). Öge (2016b) argues that democracies have better tools to address the challenges of resource governance.

In addition, Öge (2016) argues that the EITI can be used to achieve “mock compliance”, a rational process which attempts to appease an external audience by mimicking compliance to global norms whilst having hidden behavioural divergence. In the case of the EITI, government

leaders are open to join it because the benefits of compliance may outweigh the costs (Öge, 2016; Magnoa & Gatmaytan, 2017). Mock compliance is problematic because the benefits are only reserved for governments at the expense of genuine efforts that can benefit citizens.

However, Truex and Søreide, (2010) contend that although the challenges of the MSG are common across all contexts, each MSG should be analyzed individually with its particular barriers understood, treated and addressed accordingly. Hence the paper's focus on Nigeria.

7.6. Methodology:

The paper mostly surveyed secondary data in the form of books, journals, online sources, online newspapers and EITI publications to make its conclusions . It adopts the term, “institutions curse” from Menaldo (2016) instead of the, “natural resource curse” as coined by Auty (1994) to shift the focus away from *natural resources* per se towards a focus on the *management of natural resources* and its effects on development. This is done to underscore the shift in the literature away from a simplistic view about the impacts of natural resource abundance towards a more nuanced view that identifies a country's institutional context as a relevant factor that will affect development. In addition, this paper argues that the institutions curse is mostly caused by resource rents, the revenue that is derived from oil, and how it is managed and not merely by resource abundance or resource dependence (Brunnschweiler & Bulte, 2007). Although, countries with weak institutions are likely to be dependent on natural resources and hence do not diversify. The paper's reference to development is not limited to economic growth. It includes social and political development indicators such as education, health and environmental well-being.

The institutions curse denotes an intermediate causal link between natural resources and institutions. In this case, oil and minerals exert a negative impact on development via the deleterious impact on institutional quality (Sala-i-Martin & Subramanian, 2003). The paper argues that natural resources *test* the quality of institutions and if they are weak, it leads to underdevelopment. There is consensus in the literature that good enough institutions will eliminate the institutions curse (Haufler, 2010). One of the most recommended policy prescriptions for ameliorating the institutions curse is a need for transparency and accountability (William, 2011). However, this paper refutes this claim and argues that transparency is not enough.

This paper relies on the argument provided by Kolstad and Wiig (2009a) who argue that political economy models which focus on how certain resource rents lead to dysfunctional patronage or rent-seeking behavior are central to understanding the causes of the resource curse. Using their “*impartiality enhancing institutions*” theory, the paper argues that corruption, in the form of rent-seeking and patronage, can be neutralized but not through transparency alone. Impartiality enhancing institutions also describe which institutions are the most important to overcome the institutions curse.

In a context of bad institutional equilibrium where transparency is low and there is a lack of accountability, impartiality enhancing institutions are important to strengthen the interest of the public as opposed to institutions that increase the power of political elites. Impartiality enhancing institutions are deemed by Kolstad and Wiig (2009a) as especially important for resource-rich countries where laws and policies mostly benefit the elite. They are supposed to encourage power and representation to become more equal (Kolstad & Wiig, 2009a). In this paper, the elite are both government officials and TNOs. By applying Kolstad and Wiig’s (2009a) theory, the

paper therefore understands the institutions curse as a political and social issue and not a purely technical one. It does not concentrate on capacity or regulation solutions for the institutions curse.

The paper uses a single case study research approach to obtain a detailed analysis about Nigeria's implementation of the EITI because it is a flagship country of the EITI and one of the first countries to join it (Asgill, 2012). This means that the paper will have enough evidence based on Nigeria's years of EITI implementation to make a fair assessment. Nigeria is also an oil producing country, a key sector of the EITI. Furthermore, Nigeria is the largest oil-producing country in Africa but also one of the most corrupt in the World. It also has a high poverty rate. Corruption, in the form of rent-seeking and patronage dominate Nigeria's political economy. Hence, Nigeria is a good case study to illustrate the institutions curse.

The single case study approach is better suited to test whether the generalizations made by the EITI in its objectives about the achievement of transparency and accountability apply in every context (Punch, 2005). Furthermore, a single case study approach will illuminate how the EITI interacts in a context where an institutions curse exists. Generalizations can be made from this case study because EITI country members are mostly characterized by high corruption rates and low income. The findings obtained from Nigeria can be used in other similar contexts as well about the possible potential impediments for implementing the EITI.

When applying the broad definition of transparency, most scholars see transparency as having the potential to ameliorate the institutions curse that is mostly caused by a lack of accountability institutions (Gaventa and McGee, 2010). This definition of transparency goes beyond the simple definitions of transparency that focus on issues of access, timeliness, understandability and publicity. It also goes beyond economic transparency but understands that economic

transparency can lead to political transparency and is also part of it. Furthermore, a broad definition of transparency mandates the achievement of accountability through the release of information.

The paper uses the EITI as an example of a transparency initiative that attempts to achieve accountability in the oil sector. The EITI's main objective is to achieve accountability through the release of information. It thus uses a broad definition of transparency and hence the subject of this paper. The EITI literature is dominated by multi-case study approaches that aren't able to explain how the EITI interacts with a country's institutions. It is also for this reason that a single case study approach is used.

The major limitation of the single case study approach is that findings and generalizations cannot be easily applied to another context (Punch, 2005). However, a single case-study approach is more suited to delineate context specific challenges that may hinder the success of the EITI as a global standard. Furthermore, the cause study approach is better suited to determine whether there is a need to rethink some of the EITI's principles to facilitate its implementation and increase its success rate in overcoming the institutions curse. Or rather, that an alternative must be found.

8. Chapter 5: EITI Implementation in Nigeria

8.1. The Institutions Curse:

As a former British colony that attained independence in 1960, Nigeria inherited a system of decentralized despotism characterized by ethnic rule over minorities. After independence, Muslim Northerners sustained a weak hegemony over an ethnically polarized federal polity

which subsequently, after a succession of military coups, broke into a civil war in 1967 in Biafra (Watts, 2004). The political economy of Nigeria is telling that it inherited institutions that are bequeathed by four decades of military dictatorships (Sala-i-Martin & Subramanian, 2003).

Patronage politics are the order of the day. This is also exacerbated by the fact that the government does not tax citizens enough and this makes it difficult to achieve accountability (Ross, 2015). Furthermore, there is no strong legal and institutional framework that regulates the environment against oil pollution in the form of gas flares and oil spills (Omeje, 2013).

In the case of Nigeria, the Dutch Disease cannot explain its poor development outcomes (Sala-i-Martin & Subramanian, 2003). In 1986, the share of agriculture in GDP, which used to be the main sector of the economy, declined from 68% to 35% in 1981 (Garuba & Ikubaje, 2010). The government divested in the agricultural sector to develop a manufacturing sector. Simultaneously, the size of the service sector, especially government services also increased. As explained by Sala-i-Martin and Subramanian (2003), the decline in the agricultural sector was not caused by the Dutch Disease. Instead, as argued by this paper, it was caused by an institutions curse.

This is evidenced by the fact the Nigerian agricultural sector experienced a boom in the mid-1980s while the manufacturing sector has been in decline since the 1980s (Sala-i-Martin & Subramanian, 2003). The Dutch Disease focuses on the reallocation of resources toward the natural resource sector at the expense of the manufacturing industry which did not happen in Nigeria (Williams, 2011). It happens when a natural resource boom crowds out potential new industries. In the case of Nigeria, the agricultural sector was already mature (Kublusek, 2010). One can conclude that the Dutch Disease does not apply in Nigeria and that economic explanations of its negative development outcomes are not satisfactory.

Nigeria can be described as the epitome of the institutions curse because waste and corruption of oil rents cause underdevelopment. Resource revenues and how they are managed, as opposed to abundance or dependence affected its institutions negatively (Williams, 2011). The negative impact caused by resource rents also caused the lack of diversification of its economy (Menon, 2018). Hence, Nigeria's oil dependence used to be at about 70-80%, oil revenue accounted for about 80% of fiscal revenues, 90-95% of export revenues and 30-35% of GDP (Shaxson, 2009). Thus the Nigerian oil sector can be described as enclave with few direct linkages to the rest of economy. In addition, whilst Nigeria also has the largest oil reserves in Africa, oil reserves are not correlated to negative development outcomes (Brunnschweiler & Bulte, 2007).

Nigeria's development experience is also dismal. It has a high inequality and poverty rate. Additionally, it is ranked 157 by the Human Development Index (UNDP, 2018). As of 2018, Nigeria has overtaken India as the country with the largest number of people living in extreme poverty with an estimated 87 million Nigerians living on less than \$1.90 a day (Adebayo, 2018). Nigeria continues to struggle to translate its oil wealth into socio-economic growth (Adebayo, 2018).

Moreover, Nigeria is ranked 148 out of 180 by the corruption watchdog, Transparency International, which indicates that it has a high prevalence of corruption (Transparency International, 2017). The politics of Nigeria are shaped by a race to access oil revenues (Sala-i-Martin & Subramanian, 2003). Ultimately this has led to poor institutional quality which has contributed to underdevelopment.

Oil revenues in Nigeria are divided between federal, state and local government (Shaxson, 2009). The federal level receives about half of the revenues, state governments receive a quarter and

local governments about a fifth. The allocation to state and local governments is based on a 13% share of derivation from locally produced natural resources which are mostly oil and gas. This share is paid into states where resources are produced (Shaxson, 2009). Furthermore, there are also funds that are channeled into a special fund account.

As oil revenues increased, so did fiscal centralism (Watts, 2004). This was also followed by a shift away from the derivation principle towards a centrally controlled Federation Account (Watts, 2004). State and local government revenues are also heavily dependent on federal revenues. These revenues are derived from taxes and royalties from the oil sector (Jaob-Peterside, 2010). Oil revenues flow into a centralized federal state characterized by weak institutions that fuel corruption (Watts, 2004). This is why Nigeria lags behind other oil producing states such as Malaysia and Brazil which have developed linkages with other sectors in their respective economies (Jaob-Peterside, 2010).

The Niger Delta, which accounts for about 90% of Nigerian foreign exchange earnings, is at the centre of oil politics. Voting fraud was reported in 2003 and violence has since escalated between ethnic communities that is led by militant youth movements (Watts, 2004). Citizens from the Niger Delta are marginalized and excluded from oil benefits and decision making structures. As host communities, they experience the harsh environmental degradation of oil production. Land ownership disputes are the order of the day and communities are inadequately compensated for it (Müller, 2010). Furthermore, host communities have lost their livelihoods. The only recourse currently available to communities is provided by oil companies through community development projects and Memoranda of Understanding (Müller, 2010). Niger Delta communities do protest, however, the government responds with violence and communities are left without an outlet to voice their concerns (Asgill, 2012).

One can conclude that political liberties are not respected in Nigeria and there are efforts by the government and companies to stifle any form of resistance through the securitization of the Niger Delta (Müller, 2010). The Niger Delta situation can thus be described as grievance rebellion, it describes a context of patronage and rent-seeking where local communities have no platforms to voice their concerns about mining impacts and thus resort to violence (Collier & Hoeffler, 2005). This means that the Niger Delta does not have impartiality enhancing institutions that can address community grievances in any fair and meaningful way.

Müller (2010) describes Nigeria as a “war economy” that is characterized by the bunkering of oil that benefits militants and the military elite who collaborate with them and undermine transparency and accountability. The lack of transparency and accountability are partly responsible for the negative consequences of oil extraction in the Niger Delta (Müller, 2010).

To mitigate the oil effects on war and community grievances, Humphreys (2005) suggests that TNOCs must be regulated, governments must be transparent and civil society must oversee to it that accountability is achieved. In the Nigerian context, this has proved difficult to do due to the dependence of government on TNOCs in the form of an oil complex (Watts, 2004). Watts (2003:59) describes the relationship between oil companies and the Nigerian state as a “sick alliance”. Kanzleiter and Becker (2018) refer to this alliance as organized capitalism, where the state and economy fuse to create state monopoly capitalism characterized by a formation of cartels. The major TNOCs operating in Nigeria include Royal Dutch Shell, Exxon-Mobil, Chevron-Texaco, Elf and Agip (Omeje, 2013). Although transparency and accountability are recognized as able to address the institutions curse, institutions are known to exhibit stubborn persistence. This means that whilst Nigeria is a formal democracy, the balance of power between

citizens and public officials; the state and local government is still skewed in favour of elites (Sala-i-Martin & Subramanian, 2003).

In addition, Nigeria's institutional framework, which is also inherited from the colonial state is characterized by exclusionary and unsustainable mineral resource laws (Joab-Peterside, 2010). Local communities are excluded from participating in policy decisions. Access to oil benefits is a mirage (Joab-Peterside, 2010). Women are also marginalized in the oil sector. They can neither participate due to a lack of finances and have also lost their livelihoods from small scale fishing due to the environmental devastation (Garuba & Ikubaje, 2010). Furthermore, checks and balances in the form of horizontal accountability are ineffective and the president has wide ranging powers (Thurber, Emelife and Heller, 2010). The lack of impartiality enhancing institutions as described by Kolstad and Wiig (2009a) is apparent at the local level as communities do not have avenues to voice their demands to oil companies or towards the state.

8.2. Nigeria's Oil sector:

Crude oil exploration and production occurs mainly through a joint venture arrangement. The Nigerian National Petroleum Corporation (NNPC) has about 57% equity interests in six operating oil companies and the production sharing arrangements (Joab-Peterside, 2010). The oil sector heavily depends on foreign direct investment as a consequence of liberalization. The NNPC is also at the centre of Nigerian oil politics. It is accused of corruption through the bribes it receives. There is underpayment of taxes and royalties in the oil sector and the NNPC is responsible for reporting inaccurate and misleading figures which have also contributed to poor development outcomes (Okeke & Aniche, 2013).

Furthermore, the oil production arrangement is characterized by exclusive partnerships that are based on confidentiality clauses. The sector is thus enshrouded with secrecy (Okpanachi & Andrews, 2012). For example, the MOU's available to communities are negotiated on their behalf by government and company officials. This gives government officials the opportunity to negotiate tax amounts on an ad-hoc basis and in a non-transparent manner and this enables the receipt of large-scale bribery. An example is the \$180 million bribe paid by a consortium of five companies including the American firm, Halliburton to the Nigerian federal government to win a \$6 billion gas contract (Okpanachi & Andrews, 2012).

The Department of Petroleum Resources (DPR) is responsible for overseeing and supervising the activities of registered oil companies licensed to operate (Okpanachi & Andrews, 2012). The DPR has a reputation for being highly corrupt (Omeje, 2013). It also faces regulatory challenges because of its confusing status and weak capacity. On paper, the DPR and the NNPC exist as separate institutions to be supervised by the Ministry of Petroleum. As the commercial company of government, the NNPC is supposed to be regulated by the DPR but in reality, the NNPC also performs a regulatory function and monitors its own activities. NNPC is not only corrupt but it also has a lack of transparency and is exposed to the discretion of the minister and the president and thus vulnerable to political control (Okpanachi & Andrews, 2012). For example, President Obasanjo refused to appoint a petroleum Minister and instead performed the role himself. With such, discretionary power, transparency is difficult to attain (Okpanachi & Andrews, 2012). In addition, as argued by Van der Ploeg (2011), when too much power is conferred to the president in a democracy, underdevelopment is more likely to occur. In terms of capacity, the DPR relies on private capacity from oil companies to monitor them and struggles to enforce regulations (Abutudu & Garuba, 2011).

Operations of the oil industry are mostly personalized and defined by a connection to political power characterized by a lack of transparency to conceal illegal diversion of rents (Abutudu & Garuba, 2011). Thurber et al. (2010) describes Nigerian institutions as having a patronage equilibrium. Allocation of oil blocs are based on patronage to politicians, traditional leaders, military officials and cronies. The common practice is to resell oil blocs. For example, Lt-General T.Y. Danjuma made US\$500 million from an oil bloc that he later sold for US\$1billion. As a consequence, it has become a difficult endeavour to keep track of license ownership and thus the need for transparency in the sector is evident (Abutudu & Garuba, 2011). One can conclude that Nigeria can be described as a rentier economy that is dependent on rents and where underdevelopment can only be explained by corruption (Asgill, 2012).

Kolstad and Wiig (2009a), argue that impartiality enhancing institutions can reduce possibilities of favouritism and neutralize the adverse effects of oil rents that characterize the political economy of Nigeria by punishing those who benefit from opaque transparency and by empowering an independent civil society. This paper will critically analyze the EITI's ability to do so in Nigeria.

8.3. Why Nigeria Joined the EITI:

The Nigeria Extractive Industry Transparency Initiative (NEITI) Act was established in 2007 and Nigeria became the first country to implement and domesticate the EITI by creating and enabling a legal framework (Abutudu & Garuba, 2011). As recommended by Goetz and Jenkins (2001), the NEITI is given a legal standing with prospects of being institutionalized. Furthermore, it was one of the first countries to voluntarily accede to the EITI in 2004.

The NEITI is anchored on the general principles of the EITI to achieve revenue transparency in the oil sector and to achieve accountability (Abutudu & Garuba, 2011). Nigeria also established a secretariat within the presidency. The NEITI Act of 2007 also established the Multi-stakeholder Initiative, National Stakeholder Working Group (NSWG) responsible for formulating and supervising the EITI process in Nigeria (Abutudu & Garuba, 2011). Since the inception of the NEITI, Nigeria has been struggling to sustain and maintain the implementation of the NEITI as envisioned because, as argued by this paper, there were ulterior motives for joining the EITI which did not include a true commitment by local elites to be transparent about oil sector revenues to achieve accountability.

One needs to understand that the NEITI was established in the context of Nigeria's return to democratic rule after 1999 (Abutudu & Garuba, 2011). It coincided with President Olusegun Obasanjo's economic and anti-corruption reforms. In the beginning of Obasanjo's administration, crude oil output and sales were very low, there were discrepancies in fund inflows and outflows, institutional capacity was low and the ineffective management of extractive industry revenues was apparent (Gillies, 2007; Abutudu & Garuba, 2011).

Acceding to the EITI can be seen as part of Obasanjo's macro-economic reforms targeted at improving budgetary planning and implementation, economic diversification, non-oil growth and improved implementation of fiscal and monetary policy (Abutudu & Garuba, 2011). These reforms also targeted structuring privatization in the civil service, the banking sector and trade policy. Moreover, reforms were also directed at improving governance and institutional reforms such as the Economic and Financial Crime Commission (EFCC) of 2002 which was responsible for prosecuting corrupt public and private officials (Asgill, 2012). The reforms were driven by the need to improve Nigeria's reputational risk to increase investment, aid and renegotiate debt

terms with the Paris Club which include the IMF and WB (Gillies, 2007; Asgill, 2012). For example, Nigeria was able to renegotiate a US\$ 18 million write off in their external debt in 2005 (Abutudu & Garuba, 2011). In addition, it was driven by the need for Nigeria to influence policy-making in the G-8. (Gillies, 2007).

Nigeria's accession to the EITI can therefore be located in a context where improving its mineral investment climate was important (Malden, 2017). Furthermore, in an attempt to consolidate its new democracy, seeking legitimacy from the international community was an easier endeavour as compared to local legitimacy (Gillies, 2007). This was done by implementing the EITI by which its focus on revenue transparency matched the norms of the international community (Kantz, 2008). As articulated by Asgill (2012:44), "the NEITI suits the political goals of a government keen to gain legitimacy with both their people and the international community, without significantly impacting the system of political rent-seeking".

Nigeria has a history of presidents who attempt to consolidate their power and legitimacy by discrediting the previous regime. Whilst many public officials have been prosecuted for corruption and sentenced to jail, the zeal to prosecute tends to decline as the succeeding regime adopts the same habits as preceding ones (Abutudu & Garuba, 2011; Asgill, 2012). The commitment to governance reforms declined after a change in government, following the conclusion of the debt relief and the NEITI lost their chair. This decline in commitment shows that being signatory to the NEITI was driven by ulterior motives. Furthermore, it supports the assertion by Kolstad and Wiig (2009a) that where institutions are predatory and characterized by corruption, incremental change to institutions in the form of transparency will easily revert to bad equilibrium and this is what happened in Nigeria when president Yar' Adua replaced

Obasanjo. President Yar'Adua was accused for orchestrating the fall of the EFCC chair and consequently Nigeria's commitment to anti-corruption has remained questionable (Gillies, 2009).

Joining the EITI can also be seen as part of increasing economic transparency and hence Nigeria has since experienced difficulties in sustaining anti-corruption reforms (Gillies, 2007). In economics, the lack of information is mostly associated with market failures (Bellver & Kaufmann, 2005). As explained by Gillies (2007), economic transparency receives priority because Western governments and investors tolerate a lack of democratic reform in public institutions if African leaders advance economic reform that will benefit them.

The NEITI can be seen as agent-controlled transparency as described by Lindstedt and Nauren (2010) because it is not driven by the principal and in this case, local communities and civil society. Agent-controlled transparency is generally less effective in achieving transparency and accountability because, as in the case of the NEITI, it is centrally driven. The implementation of transparency at the local level is limited except in the Bayelsa State in Nigeria (EITI, 2014; Nwapi, 2014). There is thus a need to strengthen the demand-side of transparency. Revenue transparency is exclusively reserved for companies and the federal government. This excludes host communities who are better equipped to hold companies into account because they experience the direct impact of the oil industry (Nwapi, 2014).

8.4. Illusory Transparency?

The first NEITI audit covered the years 1999-2004. This was the first comprehensive audit of the oil and gas sector in Nigeria (Abutudu & Garuba, 2011). Furthermore, the NEITI is not just limited to reconciliation of revenues (Abutudu & Garuba, 2011). The financial audit determines who paid the money, how much was paid and to whom. The physical audit maps the amount of

oil and gas produced, refined, exported and lost. And, the process audit examines extractive industry processes of licensing and capital expenditure (Abutudu & Garuba, 2011). By covering these aspects of the value chain, the NEITI went over and above requirements of the EITI and was dubbed as the “glorious audit” (Abutudu & Garuba, 2011). Furthermore, the first audit achieved some success in reducing discrepancies in the payments of royalties, taxes and penalties such as gas flares (Abutudu & Garuba, 2011).

The audits also revealed weaknesses in oil governance. The financial audit revealed that oil governance is characterized by weak coordination between government agencies, poor data keeping systems resulting in discrepancies between revenue that was paid and received. The physical audits revealed that loss of crude oil between wellheads and export terminals, oil theft, poor metering systems that affect gross production volumes, the absence of standardized industry procedures for royalty calculation and the handling of imports of petroleum products (Abutudu & Garuba, 2011). The process audit revealed inter alia the abuse of discretionary ministerial powers in allocating blocs and inconsistencies in the awarding of petroleum contracts and policies.

The audits were subsequently used by civil society members such as the Civil Society and Legislative Advocacy Centre (CISLAC), PWYP Nigeria and the Zero-Corruption Coalition to engage with the NEITI secretariat about discrepancies in reported figures. For example, the 2005 audit revealed that there was a difference of 1.05 million barrels between the physical amount of oil production and the financial returns made by the Nigerian oil industry. The EITI exposes major revenue discrepancies in Nigeria which has widened the anti-corruption space (Abutudu & Garuba, 2011). The audits also contribute in stirring up debate about the oil sector in Nigeria.

However, some audits, such as the 2005 audit were out of date by six years. This shows a lack of commitment and capacity to be transparent in the sector (Abutudu & Garuba, 2011). Although, the EITI does allow for a two year time lag in audit reports, this makes reports less effective. The audits are also not always understandable. Furthermore, the reports conceal the lack of reliability in the systems and structures of the oil sector which are responsible for reporting but are deeply embedded in a corrupt system (Ejiogu, Ejiogu & Ambituuni, 2018).

Ejiogu et al. (2018) contend that due to corruption, the Nigerian reporting systems are most likely to be unreliable and this is also demonstrated by the weakness in accounting systems. This means that the information disclosed in the NEITI does not meet reliability standards as described by Kolstad and Wiig (2009b). It thus only fits a narrow understanding of transparency and can be described as nominal transparency, the availability of information that is not useful and does not ameliorate information asymmetries (Ofori and Lujala, 2015). The information released by NEITI audits can thus be described as illusory transparency.

8.5. NEITI's Lack of Enforceability:

The current practice by companies is to refund or opt for restitution for violations revealed by the audit. This has major implications for punishing corruption. The NEITI's value as an anti-corruption tool is therefore doubtful because achieving accountability depends on what is done with the information available (Kolstad & Wiig, 2009a; Abutudu & Garuba, 2011). The information that is revealed by NEITI cannot be used to institute legal action against government officials and companies and this is major weakness of the NEITI (Abutudu & Garuba, 2011). As argued by Lindtedt and Nauren (2010), accountability requires more than disclosure and publicity. Instead, it requires that where there is misconduct, sanctions must be imposed.

Section 3 of the NEITI Act 2007 is subject to scholarly scrutiny because it reveals its limitation in achieving accountability. Section 3(d) and (e) contain a secrecy clause (Abutudu & Garuba, 2011). The secrecy clause contained in section 3(d and e) leads oil companies to withhold important information that may be used to hold them accountable by civil society and communities. Furthermore, this provision causes serious limitations for sanctioning and deterring the corrupt behaviour of political elites and companies who benefit from bad equilibrium (Abutudu & Garuba, 2011).

Furthermore, section 16 of the Act excludes criminal liability and jail terms. In addition, there is no stipulation for revoking licenses as part of a sanctioning mechanism. The Act also states that, “liability cannot be placed on an individual if s/he can show the offence was committed without his consent or connivance, or that s/he took all necessary actions to ensure that the crime was not committed” (Abutudu & Garuba, 2011:28). This provision prevents the possibility of a successful prosecution and in doing so, protects TNOCs and government officials unless the government intervenes.

Without powers to prosecute the NEITI will not be able to achieve its mandate of achieving accountability. There is also insufficient linkage of prosecutions from the NEITI to other public anti-corruption agencies such as the EFCC (Abutudu & Garuba, 2011). This is made apparent by the fact no EFCC prosecutions have ever emanated from the NEITI secretariat (Abutudu & Garuba, 2011).

Even though the NEITI legally mandates companies and government to oblige to its principals, the difference between *de facto* and *de jure* accountability is important (Goetz & Jenkins, 2001). In reality, although the NEITI prescribes the achievement of accountability in law, in reality it

has not achieved any accountability. As argued by Asgill (2012), there is no shortage of well-crafted laws in Nigeria, the problem lies in implementing the laws. Kolstad and Wiig (2009a) also argue that enacting more laws and increasing the capacity of patrimonial governments will not lead to the achievement of impartiality enhancing institutions. Doing so will make patrimonial governments such as Nigeria become more powerful. Instead, it is more important to ensure that those who benefit from opaque transparency are punished.

Consequently, the NEITI is mostly described as a “toothless bulldog” (Asgill, 2012:43). Disclosing information about oil companies is meaningless if there are no sanctions available. In 2012, the NEITI revealed that about US\$8 billion was lost in potential tax payments and only about US\$ 400 million was recovered (Nwapi, 2014). This revenue could have potentially been used to improve social and economic welfare in Nigeria. One can conclude that the NEITI focuses on one face of accountability, answerability only and not answerability that is accompanied by sanctions (Fox, 2010).

The NEITI is given powers to sue in civil action only and this excludes the power initiate criminal prosecution (Ihugba, 2014). It is an Act of the National Assembly and is within the Attorney General's jurisdiction to prosecute. This means that the NEITI Act uses soft law characterized by voluntary directives ((Ihugba, 2014). As of yet, no oil company has been prosecuted or had their license suspended by the NEITI based on an NEITI recommendation (Ihugba, 2014).

Furthermore, there are oil companies which are yet to pay remedies but the NEITI has not been able to sanction or penalize them (Okeke & Aniche, 2011). Ultimately, the NEITI relies on the judiciary and EFCC to prosecute (Müller, 2010). As argued by Wilson and van Alstine (2014)

the soft law approach of the EITI limits positive spillover into institutions and this limits the likelihood of achieving accountability. The soft law approach is mostly ineffective and lacks the necessary buy-in from TNOCs (Oshionebo, 2018).

Moreover, the EITI's validation process is not enough as a means to sanction countries for non-compliance. In 2011, Nigeria was designated as "close to compliant" based on inter alia a request for Nigeria to strengthen civil society participation. The "close to compliant" standard has the potential to become the norm for countries which do not meet EITI requirements. This does not give out a good message to other countries who do not comply with the EITI (Abutudu & Garuba, 2011).

8.6. How Power Imbalances Feed into the Weaknesses of the NEITI:

The Petroleum Industry Bill (PIB) attempts to address the secrecy clause of the NEITI Act of 2007 (Abutudu & Garuba, 2011). The PIB aims to remove the secrecy around the payment of royalties, taxes, fees and bonuses. Furthermore, the PIB's main objective is to consolidate all oil and gas laws that regulate the sector (Abutudu & Garuba, 2011). Due to its wide ambition, the PIB was split into four parts, the Petroleum Industry Governance Bill, Petroleum Industry Administration Bill, Petroleum Industry Fiscal Bill and the Petroleum Host Community Bill. The Petroleum Industry Governance Bill (PIGB), a successor of the PIB, also aims to reduce the discretionary powers of the president and the petroleum minister to oversee the allocation and award of oil licensing (Carsten, 2018).

The PIGB is a step in the right direction. However, the 10 year delay in passing the bill which has the potential to unlock investment in the oil sector makes one to question whether there is a true commitment to oil transparency and accountability reforms. The PIGB also exposes the

limitations of the state's political will for reform (de Montclos, 2014). This also applies for the delay in the passing of the Freedom of Information Act (Gillies, 2009) by the House of Representatives.

"Investors" are also ambivalent about the passing of the bill, arguing that the new bill will affect their profits due to higher tax and host community levies that are said to be introduced by the bill (Okoroafor, 2018). The bill aims to give host communities a direct 10% stake in oil investments and forces the NEITI to engage directly with them. Signing the bill will present positive changes to the oil industry.

However, the alliance and dependent relationship between the state and TNOC's also prevents a genuine commitment to achieve transparency and accountability because they have more to benefit from oil rents that come from the joint-ventures and the NNPC stake of downstream operations. The Nigerian state's dependence on oil revenues, foreign technology and the volatility of global financial markets undermines its capacity to withstand pressures from TNOCs (Abutudu & Garuba, 2011). This leads one to conclude, that the Nigerian oil industry is characterized by power imbalances not only between the state and communities but between the state and TNOCs. Impartiality enhancing institutions that focus on counterbalancing existing power relations are thus necessary in Nigeria. For example, trade Unions in Nigeria have accused the state of amending the PIB several times to satisfy the interests of TNOCs (de Montclos, 2014). About 56 of these amendments, proposed by members of the Lagos Chamber of Commerce Industries, disfavour ordinary Nigerians (Abutudu & Garuba, 2011). The American government is also said to have intervened on behalf of TNOCs.

Furthermore, the NEITI also does not address the problem of IFFs and the issue of tax havens (Asgill, 2012). Even though Nigeria is also one of the first countries to implement the beneficial ownership requirement to tax effectively as stipulated in the 2016 EITI standard through a publicly available register, it does not have the capacity to do so (Adeleke, 2017). One can conclude that the NEITI does not address the international infrastructure that provides a thriving environment for corruption (Asgill, 2012). The international system of corruption is reinforced by the lack of transparency in the TNOCs domicile country (Gillies, 2009). These domicile countries, such as the United Kingdom, refuse to adhere to the same guidelines and principles that are provided by the EITI and give TNOCs carte blanche on the atrocities they create in developing countries (Young, 2009). It is through these existing power imbalances between the Global North and the Global South that shifts the blame for underdevelopment and corruption to African Governments (Haufler, 2010).

Moreover, the audits are also silent about the environmental impact of oil operations and the necessary compensation for it (Abutudu & Garuba, 2011). The explanation for this can be found in why transparency became the most supported solution for the resource curse and underscores that it is market-based solution (Gupta, 2010). The NEITI prioritizes economic transparency at the expense of political transparency which can lead to accountability. And hence the lack of a more authoritative sanctioning of companies and government officials (Fox, 2010).

Power imbalances are central to the institutions curse (Kolstad & Wiig, 2009a). They highlight the lack of impartiality enhancing institutions that allow corruption and a lack of accountability to thrive. Despite punishing rent-seeking politicians, Kolstad and Wiig (2009a) recommend that an independent and participative civil society are important to counter balance the power of those who benefit from a lack of transparency.

8.7. Civil Society Participation and Local Communities in the NEITI:

The EITI criterion includes the need to provide space for civil society participation through a Multi-Stakeholder Initiative to actively design, monitor and evaluate the process. In Nigeria, the NSWG was established to adhere to this requirement (Abutudu & Garuba, 2011). The NSWG is responsible for policy formation and programme design through participation in the NEITI's Civil Society Working Group Committee. CSOs also have a liaison officer within the NEITI secretariat who is responsible for monitoring the activities of the NEITI and reporting back to civil society's constituency (Abutudu & Garuba, 2011).

CSOs have undertaken roadshows and media campaigns aimed at publicizing NEITI audit reports. CISLAC is one of such organization that has been actively participating in awareness campaigns (Abutudu & Garuba, 2011). The EITI sees civil society as having the potential to compensate for the EITI's lack of enforcement by insisting on policies or sanctions outside of the NEITI structures through the mobilization of citizens to pressurize compliance to NEITI (Abutudu & Garuba, 2011).

Through the creation of the NSWG, oil industry operators are more alert and more attention has been brought to oil theft issues. International support has also been mobilized to have an equivalent process akin to blood diamonds for oil. There is also more awareness around environmental impacts of oil such as oil spillage which consequently also now includes direct payments to citizens. Civil society is also in the process of advocating for 30% of the royalty fee to be paid directly to host communities (Abutudu & Garuba, 2011). There are some positive outcomes for creating a NSGW. However, the NSGW is subject to scrutiny.

Structurally, the NEITI is critiqued because the NSWG is of the secretariat but not part of it. This creates a situation by which a government agency monitors another government agent and this can be seen as sabotage of its oversight role (Abutudu & Garuba, 2011). Furthermore, civil society participation in the NEITI process is weak due to a lack of technical capacity to understand the information produced (Asgill, 2012).

The ease of access to acquire the NEITI published information is also difficult and exacerbated by changing legal regimes that are subject to the president's support of the anti-corruption agenda (Abutudu & Garuba, 2011). This means that information is not costlessly obtained (Lindstedt & Nauren 2010). As argued by Lindstedt and Nauren (2010), the publication of information is not enough. If the Nigerian government is truly committed to the transparency and accountability agenda, it should attempt to bridge the data inequalities that arise because of class, race, gender, education, language and geography (Carter, 2014). This especially applies for Nigeria because their literacy rate is only 50.1% of its population and as argued by Lindstedt and Nauren (2010), the higher the education level, the stronger the capacity of people to access and understand information (UNDP, 2018).

There is also a weak comprehension of NEITI reports due to a lack of expertise on the oil industry. This creates a knowledge gap which makes it difficult for CSOs to engage in debates about inter alia royalties, taxes and penalties (Abutudu & Garuba, 2011). The weakness in civil society capacity makes it difficult to publicize information which is an accountability condition (Bellver & Kaufmann, 2005). A weak civil society also has limited power to act on the information provided (Kolstad & Wiig, 2009b).

In addition, CSOs are also polarized and this leads to a lack of coordination and institutionalization. This means that CSOs in Nigeria also have a collection action problem (Asobie, n.d.). According to Asobie (n.d.), civil society is weakened by the fact that Nigeria's social structure is characterized by a weak, factionalized and unpatriotic middle class and this hinders the creation of a sustainable opposition. Where there is lack of political competition, political transparency is even more difficult to achieve (Bellver & Kaufmann, 2005).

Another important critique about civil society participation in the NSWG is its independence which is hampered by government's interference in the selection process of CSO representatives (Abutudu & Garuba, 2011). The NSWG consists of 15 board members who are drawn from government, the six geopolitical zones of Nigeria, TNOCs, civil society, labour unions and experts from the industry (Asgill, 2012).

One of the most contentious aspects about the NSWG is that individuals are elected by government and this is considered inconsistent with EITI principles (Asgill, 2012). The NEITI does not stipulate how representatives of the NSWG should be chosen and this leaves the president with too much discretion to choose representatives based on political considerations (Ejiogu et al., 2018). Furthermore, even if there was a stipulation for electing representatives, there are only three positions available for CSOs, trade unions and representatives from the extractive industry out of 15 board members. This leaves the extractive industry with majority representation in the NSWG and this means that it can easily meet the quorum of 8 without civil society (Ihugba, 2016). Ihugba (2016:214) asks a fundamental question about the NSWG, "National interest or that of extractive industry companies?"

The majority held by extractive companies in the NSGW creates the impression that they can set the rules and the framework of enforcement. This creates a situation where transparency is self-imposed and will likely be less effective in achieving accountability (Lindstedt and Nauren, 2010). This also creates a situation “where the persons who should be held accountable are the same persons providing the information and setting the standard, the independence of the process is thus doubtful” (Ihugba, 2016:216). Ihugba (2016) suggests that there is a need to change the quorum or composition of the NSWG.

The current practice is to select representatives who are closely related to government or the ruling party. When the current president was elected, Muhammadu Buhari, there was hope that NSWG composition would change for the better. Instead, Buhari appointed the government minister for solid minerals as the new NEITI chair, a position that is usually reserved for a civil society member (Ejiogu et al., 2018). In addition, Buhari attempted to appoint civil society representatives without consulting with CSOs (Ejiogu et al., 2018). A Civil Society Steering Committee (CCSC) was created to increase the representation and involvement of CSOs but this does not address the underlying unequal power imbalances in the NSWG. In addition, the NEITI board does not publish any board, committee or working group minutes, a contradiction with the values it aims to promote (Ejiogu et al., 2018). The EITI MSI and its independence is one of its most important principles (Mainhardt-Gibbs, 2010; Sovacool et al., 2016). It requires effective participation of civil society (EITI, 2015). Currently, the fact that the EITI does not include minimum procedural guidelines for the composition of the MSI to enhance civil society and ensure that it is representative can be seen as problematic and it contradicts the requirement for impartiality enhancing institutions.

Furthermore, more attention is unfairly skewed to city-based CSOs that operate in Abuja or Lagos, neglecting the underfunded ones in host communities. Women, the youth, farmers and workers are ultimately excluded from participating in the NEITI (Abutudu & Garuba, 2011). One can conclude that the NEITI also uses an “imagined community” by relying too much on national NGOs to represent local communities (Bracking, 2009). Furthermore, the power imbalances in the NSGW are apparent.

Consequently, oil communities, at the heart of natural resource governance, are neglected and excluded from participatory processes (Abutudu & Garuba, 2011). The exclusion of local communities results in the lack of attention paid to local challenges. This means that local communities do not have any other alternative platform to express their concerns because Nigerian communities do not regard the national assembly and politicians as trust worthy (Abutudu & Garuba, 2011).

The media is also an important intermediary to achieve accountability especially in countries that have weak institutions. However, in Nigeria, media houses are also part of a “sick alliance” with the state and private companies. Consequently, investigative journalists resort to self-censorship. As an implication, the public cannot access crucial information about the oil sector (Abutudu & Garuba, 2011).

Since the independence of CSOs that participate in the NSWG is questionable, this means that the NEITI is unable to raise the voice and influence of those who are not included in the decision making structures of the oil industry and is unable to counter-balance the power of TNOCs and the Nigerian government. Therefore, the NEITI does not meet the standards of an impartiality enhancing institution (Kolstad & Wiig, 2009a).

As argued by this paper, the lack of civil society participation in the NSWG is largely attributable to the Nigerian context, a country that has an institutions curse (Ejiogu et al., 2018). It reemphasizes the persistent nature of bad institutions which cannot be altered through incremental change such as introducing transparency (Kolstad & Wiig, 2009a). This means, that localizing transparency reforms, as suggested by scholars such as Ejiogu et al. (2018) and Adeleke (2017) might not be the answer either as long as their demand is not driven by local communities and civil society.

9. Chapter 6: Conclusion and Recommendations:

This paper uses a case study of Nigeria to show that its underdevelopment is mostly caused by the mismanagement of its oil rents which is ultimately caused by its institutional context- the institutions curse. The institutions curse argues that power imbalances in decision making structures cause underdevelopment due to a lack of transparency and accountability.

According to Kolstad and Wiig's (2009a) theory on impartiality enhancing institutions, an empowered civil society has the potential to counter-balance the power of the state and TNOCs in Nigeria (Oshionebo, 2018). Furthermore, the sanctioning of those who benefit from opaque transparency, TNOCs and government officials, will alter institutional dynamics that breed corruption by fundamentally altering the incentives of local elites. The institutions curse shows us that developing countries like Nigeria have weak institutional and governance frameworks. Institutions are persistent and where bad institutions exist, they are difficult to change.

The NEITI uses revenue transparency to counteract the institutions curse. However, the NEITI's lack of enforcement and the lack of civil society independence and participation in its NSWG,

does not fundamentally alter the power imbalance that favours TNOCs and governments through transparency (Adeleke, 2017). NEITI is thus currently unable to meet the requirements of impartiality enhancing institutions. One can conclude that transparency, especially revenue transparency is not enough counteract the institutions curse.

This leaves TNOCs, which have economic power, to influence the determination of taxes and royalties and to shape policy to maximize their profits (Oshionebo, 2018). There is a dependent relationship between governments and TNOCs which enables TNOCs to capture regulatory processes at the expense of the public. Their scaremongering to divest in the extractive sector of developing countries exacerbates this dependent relationship. Consequently, laws and remedies are rarely enforced against TNOCs as illustrated in Nigeria. This is also exacerbated by the lack of capacity as illustrated by the DPR and the NNPC (de Montclos, 2014).

Therefore, this paper agrees with Kanzleiter & Becker (2018) and calls for the recognition of global human rights that will enable community struggles against TNOCs to be fought for *outside and against* institutions to create a link between local and international struggles (Kanzleiter & Becker, 2018). In the mining sector, global social rights will focus on environmental and human rights violations by TNOCs and government through an international and binding treaty alliance.

Whilst TNOCs are afforded the opportunity to protect themselves through Investment Protection Agreements and Bilateral Investment Treaties on the international stage, they have no obligations imposed on them for the atrocities and crimes they commit in developing countries (Reckordt, 2018). The EITI, like the UN Guiding Principles on Business and Human Rights, is voluntary and places no binding obligations on TNOCs. It should thus be seen as delaying efforts

to achieve a legally binding framework across the supply chain (Reckordt, 2018). The UN Binding treaty on Business and Human rights will connect struggles of communities against the government and companies to deal with these atrocities at the international level where local CSOs and local institutions of enforcement cannot. Future research should identify how an international binding treaty on business and human rights can alter power imbalances in the oil sector and beyond, and what the necessary institutional gaps at the international level are.

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